TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 752

FRANZ J. BORCHARD AND FRIEDA W. BORCHARD,
PETITIONERS,

vs.

CALIFORNIA BANK AND CALIFORNIA TRUST COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 23, 1940.

CERTIORARI GRANTED APRIL 1, 1940.

SUPREME COURT OF THE UNITED STATES

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

LLOYD S. NIX, Esq.,
436 Title Insurance Building,
433 South Spring Street,
Los Angeles, California.

For Appellees:

TOM W. HENDERSON, Esq.,
SWANWICK, DONNELLY & PROUDFIT,
Esqs.,
912 California Bank Building,
629 South Spring Street,
Los Angeles, California. [1*]

United States of America, ss.

To California Bank, a banking corporation, and California Trust Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing appeal filed on April 14, 1939, in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain consolidated cause No. 24,-

*Page numbering appearing at the foot of page of original certified Transcript of Record.

441-J and 24,442-J, Central Division, wherein Franz J. Borchard and Frieda W. Borchard are appellants and you are appellees to show cause, if any there be, why the decree, order or judgment in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Wm. P. James, United States District Judge for the Southern District of California, this 14 day of April, A. D. 1939, and of the Independence of the United States, the one hundred and sixty-third.

WM. P. JAMES,
U. S. District Judge for the
Southern District of California.

Service of a copy of the foregoing Citation Petition for Appeal and order allowing the same, and Assignment of Errors is acknowledged this 17th day of April, 1939.

SWANWICK, DONNELLY & PROUDFIT,
By: TOM W. HENDERSON,
Attorneys for Appellees. [2]

In the District Court of the United States, Southern District of California, Central Division.

In Bankruptcy No. 24441-J, 24442-J

In the Matter of:

FRANZ J. BORCHARD,
FRIEDA W. BORCHARD,

Bankrupt.

APPOINTMENT, OATH AND REPORT OF APPRAISERS

It is Ordered that H. L. Bentley of Los Angeles and Walter Dunn of Los Angeles and Sol Meyers of Los Angeles, three disinterested persons, be, and they are hereby appointed appraisers to appraise the real and personal property belonging to the estate of the said bankrupt, and report their appraisal to the court, at a compensation to be made as soon as may be, and the appraisers be duly sworn.

Witness my hand this 25 day of March, 1935.

SAMUEL W. McNABB,
Referee in Bankruptcy.

as per order made in open court.

Southern District of California—ss.

Personally appeared the within named Appraisers and severally made oath that they will fully and

fairly appraise the aforesaid real and personal property according to their best skill and judgment.

H. L. BENTLEY
WALTER S. DUNN
SOL MEYERS

Subscribed and sworn to before me this 25 day of March, 1935.

[Notarial Seal) HARVEY L. THOMAS, Notary Public in and for the County of Los Angeles, State of California. My Commission expires Feb. 6, 1937. [2-a]

[Title of District Court and Cause.]

APPOINTMENT, OATH AND REPORT OF APPRAISERS

It is ordered that ..... of ..... of ..... and ..... of ..... three disinterested persons, be, and they are hereby appointed appraisers to appraise the real and personal property belonging to the estate of the said bankrupt, and report their appraisal to the court at a compensation not exceeding $10.00 per day each, said appraisal to be made as soon as may be, and the appraisers be duly sworn.

Witness my hand this ..... day of ..... 193....

.....
Referee in Bankruptcy.

Southern District of California—ss.

Personally appeared the within named Appraisers and severally, made oath that they will fully and fairly appraise the aforesaid real and personal property according to their best skill and judgment.

H. L. BENTLEY
WALTER S. DUNN
SOL MEYERS

Subscribed and sworn to before me this ..... day of ....., 193.....

.....

Notary Public in and for the County of Los Angeles, State of California.

When completed, kindly return duplicate to
F. H. PLETCHER,
535 H. W. Hellman Bldg.,
Los Angeles, Cal. [2-b]

PARTICULAR INVENTORY

General Head	Description	Value	Appraised Value
Horses, Cows, Sheep and other Animals	2 horses @ 50.00 each	100.00	50.00
	1 cow	50.00	20.00
	10 chickens	5.00	5.00
Farming stock & Implements	1 Holt Tractor (Holt 15)	260.00	130.00
	2 wagons		
	2 plows		
	1 harrow		
	2 Disc		
	1 Gooseneck		
	1 spring tooth		
	1 roller		
	1 float		
	1 ditcher		
	1 mower		
	2 rakes		
	4 hoes		
	2 forks		
	2 shovels		
	1 scraper		
	1 wheelbarrow		
	1 lawnmower		
	1 ladder	200.00	100.00
	1½ tons of Hay (feed for horses & cows)	25.00	
Household Goods & Furniture	Furniture in debtor's home and wearing apparel	200.00	

(Each Bankrupt has an undivided one-half interest in the above.)

Policies of Insurance—Pacific Mutual Life. Ins. Co. $10,000.00
Calif. State Life Ins. Co. 5,000.00
(above policies on life of Franz Borchard)

[2-c]

We, the undersigned, having been notified that we were appointed to estimate and appraise the real and personal property aforesaid, have attended to the the duties assigned us, and after strict examination and careful inquiry, we do estimate and appraise the same as follows:

The following real property, located in the County of Los Angeles, State of California, is held by petitioner in joint tenancy with his wife, Frieda W. Borchard. The address of the petitioner is 8320 Reseda Ave., North Los Angeles, Cal.

Parcel #1—East 9.7 acres of Lot 11; West 4.85 acres of the Northwest quarter of Lot 12; East 4.85 acres of Northwest quarter of Lot 12; Southwest one-half of Lot 12; Subdivision No. 1 of the property of the Porter Land and Water Co., as per map recorded in Book 31, page 3-6 of Miscellaneous Records of Los Angeles County, State of California, all in Section 19, Township 2 North, Range 15 West, S. B. B. & M. (approximately 30 acres).....

	Land	18,000.00
Appraised at	Crop	1,875.00

#2—Lots 698 and 699, in Tract No. 1006, except the southerly 1320 feet thereof, as per map recorded in book 19, pages 1-34 of Maps, Records of Los Angeles County, State of California.....

	Land	13,800.00
Appraised at	Imp.	1,500.00

#3—Lot 727, Tract No. 1000, as per map recorded in Book 19, pages 1-34 of Maps, Records of Los Angeles County, State of California.....

Appraised at 7,000.00

#4—Lots 210 and 211, and Lot 233, with exception of streets, Zelzah Tract, as per map recorded in Book 16, pages 94-95 of Maps, Records of Los Angeles County, State of California.....

Appraised at $11,375.00

Farming land in Lafayette Township, Coles County, Illinois, described as NE-S-W and NW-SE; All S W-N of R. R. and 5 47/A in N-E cor.; S-E-N-W and 6 AN side; 5 side S. W. N-E; and N. end SW, SE, N of R. R., all in Section 19, Township 12.....

Appraised at 15,000.00

One 1927 Hudson automobile	"	"	50.00
One 1926 Reo automobile	"	"	25.00
" 1930 Ford Truck	"	"	175.00
" 1926 Studebaker automobile	"	"	25.00
120 shares Stock San Fernando Heights Orange Association			600.00
Revolving fund San Fernando Heights Orange Association			200.00

In Witness Whereof, we hereunto set our hands at Los Angeles, California, this 1 day of May, 1935.

2 days
2 " and 4.42 auto & exp.
2 "

H. L. BENTLEY
WALTER S. DUNN
SOL MEYERS
Appraisers.

Filed May 1-1935 at ..... Min. past 10 o'clock A. M. S. W. McNabb, Referee; H. L. Thomas, Clerk.

Filed Aug. 29, 1935. R. S. Zimmerman, Clerk. By L. B. Figg, Deputy Clerk. [2-d]

[Title of District Court and Cause.]

ORDER FOR REINSTATEMENT AND RESTRAINING ORDER

Upon reading the verified petition of Franz J. Borchard in the above entitled proceedings, and good cause appearing,

It Is Ordered that the petition of said Franz J. Borchard heretofore filed in the above entitled proceedings be, and it is hereby, reinstated, and that the said matter be, and the same is hereby, re-referred to the Conciliation Commissioner for the County of Los Angeles for further proceedings under the provisions of Section 75 (s) of the Bankruptcy Act, as amended.

It Is Further Ordered that California Bank, a corporation, its officers, attorneys and agents, and California Trust Company, a corporation, its officers, attorneys and agents, and each of them, be, and they are hereby, enjoined and restrained until further order of this court, from selling or causing to be sold, or proceeding with or conducting a sale of the property herein mentioned and described, to-wit:

The property mentioned and described in that certain deed of trust, executed by the petitioning debtor, Franz J. Borchard, and Frieda W. Borchard, his wife, to California Trust Company, a corporation, as trustee, recorded April 26, 1927, in Book 7501, page 71, of Official Records of Los Angeles County, California, or any portion of the property described therein, to-wit:

East 9.7 acres of Lot 11; West 4.85 acres of the Northwest quarter of Lot 12; East 4.85 acres of Northwest quarter of Lot 12; Southwest one-half of Lot 12; Subdivision No. 1 of the property of the Porter Land and Water Co., as per map recorded in Book 31, page 3-6 of Miscellaneous Records of Los Angeles County, State of California, all in Section 19, Township 2 North, Range 15 West, S. B. B. & M. [3] Lots 698 and 699, and in Tract No. 1000, except the southerly 1320 feet thereof, as per map recorded in Book 19, pages 1-34 of Maps, Records of Los Angeles County, State of California.

The property mentioned and described in that certain deed of trust, executed by the petitioning debtor, Franz J. Borchard, and Frieda W. Borchard, his wife, to California Trust Company, a corporation, as trustee, recorded December 2, 1927, in Book 8084, page 65, of Official Records of Los Angeles County, California, or any portion of the property described therein, to-wit:

Lot 727, Tract No. 1000, as per map recorded in Book 19, pages 1-34 of Maps, Records of Los Angeles County, State of California.

The property mentioned and described in that certain deed of trust, executed by the petitioning debtor, Franz J. Borchard, and Frieda W. Borchard, his wife, to California Trust Company, a corporation, as trustee, recorded January 9, 1929, in Book 8920, page 317, of Official Records of Los Angeles County, California, or any portion of the property described therein, to-wit:

Lots 210 and 211, and Lot 233, with exception of streets, Zelzah Tract, as per map recorded in Book 16, pages 94-95 of Maps, Records of Los Angeles County, State of California.

The property mentioned and described in that certain deed of trust, executed by the petitioning debtor, Franz J. Borchard, and Frieda W. Borchard, his wife, to California Trust Company, a corporation, as trustee, recorded June 21, 1933, in Book 12218, at page 217, of Official Records of Los Angeles County, California, or any portion of the

property described therein, to-wit: all of the property hereinbefore described; and that they, and each of them, be, and they are hereby, enjoined and restrained from maintaining or proceeding with or instituting any suit upon the obligations secured by any of said deeds of trust, by way of foreclosure or otherwise, until further order of this court.

It Is Further Ordered that said California Bank, a corporation, its officers, attorneys and agents, and each of them, be, [4] and they are hereby, enjoined and restrained, until further order of this court, from collecting or receiving any of the proceeds of the sugar beet crops or citrus crops from any of the property hereinbefore described; and it is further ordered that American Crystal Sugar Co., American Fruit Growers Association, and Hazeltine and Killen, their officers, attorneys and agents, and each of them, be, and they are hereby, enjoined and restrained from paying over or releasing to said California Bank, a corporation, its assignees, officers, attorneys or agents, or any of them, any of the proceeds of any of said crops, until further order of this court.

Dated, this 20 day of September, 1935.

WM. P. JAMES,
U. S. District Judge.

(Order for Reinstatement and Restraining Order in the Matter of Frieda W. Borchard, debtor, in

like form was also made and entered on Sept. 20, 1935.)

[Endorsed]: Filed 2:05 P.M. Sep. 20, 1935. R. S. Zimmerman, Clerk. By F. Betz, Deputy Clerk. [5]

[Title of District Court and Cause.]

REINSTATEMENT, ADJUDICATION AND ORDER OF REFERENCE

Under Section 75-s, Bankruptcy Act.

At Los Angeles, in said District, on Sept. 24, 1935, before said Court in Bankruptcy, the petition of Franz J. Borchard, debtor in the above-entitled matter, that he be adjudged a bankrupt under the terms and provisions of Section 75-s of the Bankruptcy Act, and within the true intent and meaning of the Acts of Congress relating to bankruptcy having been heard and duly considered, the said Franz J. Borchard is hereby declared and adjudged a bankrupt accordingly.

It is thereupon ordered that said case be referred to H. A. Saidy, Esq., the Conciliation Commissioner for Los Angeles County, to act as Referee in Bankruptcy of this Court and to take such further proceedings therein as are required by said Acts; and that the said Franz J. Borchard shall attend before said Conciliation Commissioner at his office in Los Angeles, California, on October 1, 1935, at 10:00 o'clock a.m., and shall submit to such orders as may

be made by said Conciliation Commissioner, acting as such Referee or by this Court relating to said matter in bankruptcy.

Witness, the Honorable Wm. P. James, Judge of said Court, and the seal thereof, at Los Angeles, in said District, on Sept. 24, 1935.

[Seal] R. S. ZIMMERMAN,
Clerk.
By L. WAYNE THOMAS,
Deputy Clerk.

(Order for Adjudication under said Section 75-s was also made and entered on Sept. 24, 1935, in the Matter of Frieda W. Borchard, debtor.)

[Endorsed]: Filed 4:39 P.M. Sep. 24, 1935. R. S. Zimmerman, Clerk. By L. Wayne Thomas, Deputy Clerk. [6]

[Title of District Court and Cause.]

PETITION FOR APPOINTMENT OF APPRAISERS, ETC.

To the Above Entitled Court and to the Honorable H. A. Saidy, Conciliation Commissioner:

Your petitioner, Franz J. Borchard, respectfully represents:

That he is the petitioning debtor in the above entitled proceedings and has heretofore filed an amendment to his petition therein, praying for relief under Section 75-s of the Bankruptcy Act, and has heretofore filed his petition for reinstatement

of proceedings, praying that further proceedings be had pursuant to the provisions of Section 75 of the Bankruptcy Act, as amended; and the above entitled court having ordered said proceedings so reinstated and referred to H. A. Saidy, Conciliation Commissioner for the County of Los Angeles;

Now, Therefore, your petitioner prays that appraisers be appointed and that all of his property, wherever located, whether pledged, encumbered, or unencumbered, be appraised, and that his unencumbered exemptions, and unencumbered interest or equity in his exemptions, as prescribed by State law, be set aside to him, and that he be allowed to retain possession, under the supervision and control of the court, of all of the remainder of his property, including his encumbered exemptions, under the terms and conditions set forth in sub-section (s) of Section 75 of the Bankruptcy Act, as amended, and for such other and further order as may be just and proper in the premises.

FRANZ J. BORCHARD,
Petitioner.

LLOYD S. NIX,
Attorney for Petitioner.

(Verified Oct. 18, 1935.)

[Endorsed]: Filed 12:56 P.M. Jun. 7, 1939. R. S. Zimmerman, Clerk. By R. B. Clifton, Deputy Clerk. [7]

United States District Court, Southern District of California, Central Division

No. 24442—Bank.

In the Matter of

FRANZ J. BORCHARD,

Debtor.

No. 24441—Bank.

In the Matter of

FRIEDA W. BORCHARD,

Debtor.

MEMORANDUM OF CONCLUSIONS, AND ORDER

The debtor herein filed a petition upon which an order to show cause was issued to require the California Bank, holding various mortgage liens against the property of the debtor, to release claim made by the mortgagee to the crop of oranges grown in the year 1935 on the debtor's property. The Bank answered, asserting that it held a valid lien under a chattel mortgage, executed on the 30th day of January, 1934, by the debtor and his wife, as additional security to other loans made in large amounts to the debtor. The contention of the debtor is that the chattel mortgage affected only the crops grown on the land during the year 1934, and not those grown during the year 1935. The Bank has furnished for the examination of the Court a photostatic copy of the original chattel mortgage, which contains the

clause which in express terms covers all crops grown or harvested during the year 1934 "and thereafter during the continuance of this mortgage on the following described real property * * *." The conclusion is inescapable from this language that the mortgage was good [8] as to crops subsequently grown until the mortgage debt was satisfied. I therefore hold that the chattel mortgage gave the California Bank a valid lien against all crops grown on the debtor's property as described in the mortgage, both for the year 1934 and the succeeding years, and until the debt had been paid. The Bank has objected to the jurisdiction of the Court and has countered with a motion to dismiss the proceedings under Subdivision (s), as amended, of the Bankruptcy Act on the ground that the same is unconstitutional. There are a great number of cases now pending and under submission before the Court in which the same constitutional question is raised against the farm debtors proceeding. It will suffice for the purposes of the question submitted, to determine as I have, the matter of the existence of the lien on the 1935 crops. If counsel for the parties desire a ruling on the constitutional question, they can advise me and that decision will be made at a later date. This order shall also affect any interest that Frieda W. Borchard, wife of Franz J. Borchard, may assert in the 1935 crop and its proceeds. An exception is noted in favor of the debtors.

Dated December 12, 1935.

WM. P. JAMES,
U. S. District Judge.

[Endorsed]: Filed Dec. 12, 1935, 4:30 P.M. R. S. Zimmerman, Clerk. By Murray E. Wire, Deputy Clerk. [9]

[Title of District Court and Cause.]

ORDER

The debtor Franz J. Borchard prior to this date petitioned the court for an order as against California Bank, requiring the proceeds of the sugar beet crop grown during the year 1935 and alleged to be held by Crystal Sugar Company, and proceeds of the Valencia orange crop grown the same year and alleged to be held by American Fruit Growers Association and Hazeltine and Killen, to be turned over to him. The Bank responded to the petition, alleging that the court had no authority to make an order against the other parties named because they had not been brought into court by service of debtor's petition; and further alleging that Section 75 (s) of the Bankruptcy Act was invalid on several grounds, particularly that contract rights were taken away without due process of law and that private property was taken without compensation. The prayer of the answer of California Bank was that debtor's petition be denied and the proceeding dismissed. After hearing had, the court on December 12, 1935, made its order determining

that the Bank had a valid lien against all crops grown on the debtor's property during the year [10] in question and reserved a ruling on the constitutional questions. I am of the view that the order as made and filed covered the issues as presented, with the exception that a ruling was not made on the issue as to the constitutionality of Section 75 (s). The same question has been presented in numerous cases, and I have determined to overrule the objection to the constitutionality of the Act. In the Matter of Magdalena I. Domingues, Debtor, No. 25551-Bank, I have filed a memorandum of conclusions in which I express my reasons for the action taken. A copy of that memorandum is enclosed for advice of respective counsel.

It Is Ordered: That the objections of California Bank as expressed in its application to have these proceedings dismissed be and they are overruled and the application to dismiss is denied. An exception is noted in favor of California Bank.

Dated May 15, 1936.

WM. P. JAMES,
U. S. District Judge.

[Endorsed]: Filed 4:20 P.M. May 15, 1936. R. S. Zimmerman, Clerk. By Murray E. Wire, Deputy Clerk. [11]

[Title of District Court and Cause.]

NUNC PRO TUNC ORDER AMENDING ORDER OF MAY 15, 1936

Good cause appearing therefor, It Is Hereby Ordered that the order of May 15, 1936, made herein as follows:

> "It Is Ordered: That the objections of California Bank as expressed in its application to have these proceedings dismissed be and they are overruled and the application to dismiss is denied. An exception is noted in favor of California Bank."

be and the same is hereby amended nunc pro tunc to appear of record as of May 15, 1936, as follows:

> "It Is Ordered: That the objections of California Bank as expressed in its application to have these proceedings dismissed be and they are overruled and the application to dismiss is denied without prejudice. An exception is noted in favor of California Bank."

Dated: June 8, 1936.

WM. P. JAMES,
Judge of the United States
District Court.

[Endorsed]: Filed 1:44 P.M. Jun. 8, 1936. R. S. Zimmerman, Clerk. By R. B. Clifton, Deputy Clerk. [12]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated and Agreed by and between Franz J. Borchard and Frieda W. Borchard, the debtors above named, and California Bank, a creditor of said debtors, and by and through their respective counsel herein, that a portion, to-wit, the sum of $3,900.00 of those certain moneys held by American Fruit Growers, Inc. of California and Hazeltine & Killen (Roland Hazeltine and Homer L. Killen), which said moneys represent a portion of the proceeds of crops produced during the year 1935 on the real property owned by said debtors and described in that certain Mortgage of Crops held by California Bank, dated January 30, 1934, and recorded in Book 12769, at page 105 of Official Records of Los Angeles County, California, and upon which said moneys California Bank has and does now hold a valid and subsisting first lien under and by virtue of the terms of the aforesaid Mortgage of Crops, shall be paid forthwith to California Bank which shall, in turn, disburse said moneys toward the maintenance and protection of the orange grove situated and being upon a portion of said real property, as follows:

1. To install irrigation line—
Approximately $ 425.00
2. Three irrigations— " $ 400.00

[15]

3. Nitrogen fertilizer (two applications—½ lb. each)—	Approximately	$ 250.00
4. Dairy Manure (one application)—	Approximately	$ 600.00
5. Pruning—	"	$ 575.00
6. Cultivation—	"	$ 300.00
7. Furrowing out and irrigation labor—	Approximately	$ 300.00
8. Treatment of entire grove for scale—	Approximately	$1,000.00
9. Miscellaneous expense—	"	$ 50.00
TOTAL—	Approximately	$3,900.00

It Is Further Stipulated and Agreed by and between the parties hereto and through their respective counsel herein that nothing contained herein nor the assent of California Bank to the within stipulation shall constitute a waiver or relinquishment by California Bank of any of its rights in or to any and all other moneys now or hereafter subject to the lien of the aforesaid Mortgage of Crops; nor shall anything contained herein affect or prejudice any of the rights of said California Bank under and by virtue of the ownership of those certain deeds of trust affecting the real property described in the aforesaid Mortgage of Crops; nor shall anything contained herein constitute a waiver or relinquishment of or be deemed to prejudice in any manner the right of California Bank to continue to object and except to the above entitled

Court's jurisdiction to entertain the above entitled proceeding upon the grounds that the statute pursuant to which the said proceeding was instituted and is maintained, is unconstitutional and void.

Dated: May 27th, 1936.

FRANZ J. BORCHARD
FRIEDA W. BORCHARD
LLOYD S. NIX
By LLOYD S. NIX,
Attorney for Franz J. Borchard
and Frieda W. Borchard. [16]

CALIFORNIA BANK
By J. B. CHAFFEY,
Vice President.

SWANWICK, DONNELLY &
PROUDFIT
By TOM W. HENDERSON,
Attorneys for California Bank.

The provisions of the within stipulation are approved in their entirety.

Dated: May 27, 1936.

H. A. SAIDY,
(Conciliation Commissioner)

In accordance with the foregoing stipulation, It Is Ordered that a portion, to-wit, the sum of $3,900.00, of the moneys held by American Fruit Growers, Inc. of California and Hazeltine & Killen (Roland Hazeltine and Homer L. Killen), be re-

leased and paid over to California Bank for disbursement pursuant to the within stipulation.

Dated: May 27, 1936.

WM. P. JAMES,
Judge of the United States
District Court.

[Endorsed]: Filed 4:35 P.M. May 27, 1936. R. S. Zimmerman, Clerk. By R. B. Clifton, Deputy Clerk. [17]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated and Agreed, by and between Franz J. Borchard and Frieda W. Borchard, the debtors above named, and California Bank, a creditor of said debtors, and by and through their respective counsel herein, that a portion, to-wit, the sum of $2,494.83 of those certain moneys held by American Fruit Growers, Inc. of California and Hazeltine & Killen (Roland Hazeltine and Homer L. Killen), which said moneys represent a portion of the proceeds of crops produced during the year 1936 on the real property owned by said debtors and described in that certain Mortgage of Crops held by California Bank, dated January 30, 1934, and recorded in Book 12769, at page 105 of Official Records of Los Angeles County, California, shall be paid forthwith to California Bank which shall, in turn, disburse said moneys toward the mainte-

nance and protection of the orange grove situated and being upon a portion of said real property, as follows:

1. Irrigations—	Approximately	$ 652.00
2. Nitrogen Fertilizer—	"	334.00
3. Dairy Manure—	"	644.50
4. Cultivation—	"	236.25
5. Furrow and Irrigation Labor—	Approximately	432.63
6. Pest Control—	"	195.45
TOTAL—	Approximately	$2,494.83

[19]

It Is Further Stipulated and Agreed by and between the parties hereto and through their respective counsel herein that nothing contained herein nor the assent of California Bank to the within stipulation shall constitute a waiver or relinquishment by California Bank of any of its rights in or to any and all other moneys now or hereafter subject to the lien of the aforesaid Mortgage of Crops; nor shall anything contained herein affect or prejudice any of the rights of said California Bank under and by virtue of the ownership of those certain deeds of trust affecting the real property described in the aforesaid Mortgage of Crops; and that nothing herein shall prejudice or jeopardize the rights of the debtors.

Dated: this 10 day of June, 1937.

FRANZ J. BORCHARD
FRIEDA W. BORCHARD

LLOYD S. NIX,
Attorney for Franz J. Borchard and
Frieda W. Borchard.

CALIFORNIA BANK
BY J. B. CHAFFEY,
Vice President.

SWANWICK, DONNELLY &
PROUDFIT

By TOM W. HENDERSON,
Attorneys for California Bank.

The provisions of the within stipulation are approved in their entirety.

Dated: this 30 day of June, 1937.

OREGON SMITH,
Conciliation Commissioner. [20]

In accordance with the foregoing stipulation, It Is Ordered that certain moneys hereinabove referred to, held by American Fruit Growers, Inc. of California and Hazeltine & Killen (Roland Hazeltine and Homer L. Killen), be released and paid over to California Bank pursuant to the within stipulation.

Dated: this 1 day of July, 1937.

WM. P. JAMES,
Judge of the United States
District Court.

[Endorsed]: Filed 4:35 P.M. Jul. 1, 1937. R. S. Zimmerman, Clerk. By F. Betz, Deputy Clerk. [21]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated and Agreed, by and between Franz J. Borchard and Frieda W. Borchard, the debtors above named, and California Bank, a creditor of said debtors, and by and through their respective counsel herein, that the sum of $3,556.64 held by American Crystal Sugar Company of Oxnard, California, which said moneys represent a portion of the proceeds of crops produced on the real property owned by said debtors, and described in that certain Mortgage of Crops held by California Bank, dated January 30, 1934, and recorded in Book 12769, at page 105 of Official Records of Los Angeles County, California, and upon which said moneys California Bank has and does now hold a valid and subsisting first lien under and by virtue of the terms of the aforesaid Mortgage of Crops, shall be disbursed forthwith by said American Crystal Sugar Company of Oxnard, California, as follows:

To California Bank	$2,056.64
To Franz J. Borchard and Frieda W. Borchard	1,500.00
TOTAL	$3,556.64

It Is Further Stipulated and Agreed, by and between the parties hereto, and through their respec-

tive counsel herein, that of the moneys now held by Western Rose Company, (T. J. Morris and [22] Albert Morris), representing the proceeds of certain crops grown upon the above mentioned real property, or constituting rentals payable under and pursuant to an agreement between the debtors and Western Rose Company, (T. J. Morris and Albert Morris), the said Western Rose Company, (T. J. Morris and Albert Morris), shall forthwith issue and deliver to California Bank, a check in the sum of $946.47, payable to H. L. Byram, Tax Collector, which said check shall be used to pay the first installment of taxes for the fiscal year 1937-1938 upon the real property hereinabove mentioned.

It Is Further Stipulated and Agreed, by and between the parties hereto, and through their respective counsel herein, that nothing contained herein, nor the assent of California Bank to the within Stipulation, shall constitute a waiver or relinquishment by California Bank of any of its rights in or to any and all other moneys now or hereafter subject to the lien of the aforesaid Mortgage of Crops; nor shall anything contained herein affect or prejudice any of the rights of said California Bank under and by virtue of the ownership of those certain Deeds of Trust affecting the real property described in the aforesaid Mortgage of Crops.

Dated: This 20th day of December, 1937.

FRANZ J. BORCHARD
FRIEDA W. BORCHARD
LLOYD S. NIX
By LLOYD S. NIX,
Attorney for Franz J. Borchard
and Frieda W. Borchard.

CALIFORNIA BANK
By J. B. CHAFFEY,
Vice President.

SWANWICK, DONNELLY &
PROUDFIT
By TOM W. HENDERSON,
Attorneys for California Bank. [23]

The provisions of the within Stipulation are approved in their entirety.

Dated: This 6th day of January, 1938.

C. P. VON HERZEN,
Conciliation Commissioner.

ORDER

In accordance with the foregoing Stipulation, It Is Ordered that all of the moneys hereinabove referred to, held by American Crystal Sugar Company of Oxnard, California, and Western Rose Company, (T. J. Morris and Albert Morris), be released and paid over pursuant to the within Stipulation.

Dated: This 10th day of January, 1938.

WM. P. JAMES,
Judge of the United States
District Court.

[Endorsed]: Filed 8:54 A.M. Jan. 10, 1938. R. S. Zimmerman, Clerk. By F. Betz, Deputy Clerk. [24]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated and Agreed, by and between Franz J. Borchard and Frieda W. Borchard, the debtors above named, and California Bank, a creditor of said debtors, and by and through their respective counsel herein, that the sum of $1,763.15 held by American Fruit Growers, Inc., of California, and Hazeltine & Killen, (Roland Hazeltine and Homer L. Killen), which said moneys represent a portion of the proceeds of crops produced during the year 1937 on the real property owned by said debtors, and described in that certain Mortgage of Crops held by California Bank, dated January 30, 1934, and re-recorded in Book 15278, at page 252 of Official Records of Los Angeles County, California, shall be paid forthwith to California Bank, which shall, in turn, disburse said moneys to the extent thereof toward the maintenance and protection of the orange-grove situated and being upon a portion of the real property, as follows:

1. Irrigation Water	$700.00	
2. Fertilizer—Nitrogen	350.00	
3. Dairy Manure	650.00	
4. Pruning	250.00	
5. Cultivation	300.00	
6. Furrow & Irrigation Labor	400.00	
		[26]
7. Pest Control	750.00	
8. Miscellaneous	50.00	
TOTAL		$3,450.00

It Is Further Stipulated and Agreed, by and between the parties hereto, and by and through their respective counsel herein, that the balance now on hand, in the sum of $1,138.87, standing in the account, entitled, "Borchard Special Account", at the Van Nuys Branch of California Bank, shall be applied upon the expenditures above listed for the maintenance and protection of said orange-grove.

It Is Further Stipulated and Agreed, by and between the parties hereto, and by and through their respective counsel herein, that California Bank shall receive the proceeds of the crop of navel oranges to be picked from said grove this spring, and such proceeds shall be applied by California Bank, to the extent the same may be required, upon the expenditures above listed for the maintenance and protection of said orange-grove.

It Is Further Stipulated and Agreed, by and between the parties hereto, and by and through their respective counsel herein, that nothing contained

herein, nor the assent of California Bank to the within Stipulation, shall constitute a waiver or relinquishment by California Bank of any of its rights in or to any and all other moneys now or hereafter subject to the lien of the aforesaid Mortgage of Crops; nor shall anything contained herein affect or prejudice any of the rights of said California Bank under and by virtue of the ownership of those certain Deeds of Trust affecting the real property [27] described in the aforesaid Mortgage of Crops.

Dated: This 7th day of March, 1938.

FRANZ J. BORCHARD
FRIEDA W. BORCHARD

LLOYD S. NIX
By LLOYD S. NIX,
Attorney for Franz J. Borchard
and Frieda W. Borchard.

CALIFORNIA BANK
By J. B. CHAFFEY,
Vice President.

SWANWICK, DONNELLY &
PROUDFIT
By TOM W. HENDERSON,
Attorneys for California Bank.

The provisions of the within Stipulation are approved in their entirety.

Dated: This 11th day of March, 1938.

C. P. VON HERZEN,
Conciliation Commissioner.

ORDER

In accordance with the foregoing Stipulation, It Is Ordered that the moneys hereinabove referred to, held by American Fruit Growers, [28] Inc., of California, and Hazeltine & Killen, (Roland Hazeltine and Homer L. Killen), be released and paid forthwith to California Bank, pursuant to the within Stipulation.

It Is Further Ordered, that the sum of $1,138.87, standing in the account, entitled, "Borchard Special Account", at the Van Nuys Branch of California Bank, shall be used in accordance with the terms of the within Stipulation.

It Is Further Ordered, that the proceeds of the navel oranges crop referred to in the within Stipulation, shall be paid to California Bank, and applied by it in accordance with the terms of the within Stipulation.

Dated: This 14 day of March, 1938.

WM. P. JAMES,
Judge of the United States
District Court.

[Endorsed]: Filed 1:58 P.M. Mar. 14, 1938. R. S. Zimmerman, Clerk. By F. Betz, Deputy Clerk. [29]

[Title of District Court and Cause.]

PETITION FOR APPOINTMENT OF APPRAISERS, ETC.

To the Above Entitled Court and to the Honorable C. P. Von Herzen, Conciliation Commissioner:

Your petitioners, Franz J. Borchard and Frieda W. Borchard, respectfully represent:

That they are the petitioning debtors respectively in the above entitled proceedings and have heretofore filed an amendment to their respective petitions therein, praying for relief under Section 75-s of the Bankruptcy Act, as amended, and that proceedings are now pending before C. P. Von Herzen, Conciliation Commissioner for the County of Los Angeles;

Now, Therefore, your petitioners, and each of them, pray that appraisers be appointed and that all of their property, wherever located, whether pledged, encumbered, or unencumbered, be appraised, and that their unencumbered exemptions, and unencumbered interest or equity in their exemptions, as prescribed by State law, be set aside to them, and that they be allowed to retain possession under the supervision and control of the court, of all of the remainder of their property, including their encumbered exemptions, under the terms and conditions set forth in sub-section (s) of Section 75 of the Bankruptcy Act, as amended, and for such

other and further order as may be just and proper in the premises.

FRANZ J. BORCHARD
Petitioner
FRIEDA W. BORCHARD
Petitioner

LLOYD S. NIX,
Attorney for Petitioners.

(Verified May 24, 1938.) [31]

[Endorsed]: Filed 12:56 P.M. Jun. 7, 1939. R. S. Zimmerman, Clerk. By R. B. Clifton, Deputy Clerk. [32]

[Title of District Court and Cause.]

APPOINTMENT, OATH AND REPORT OF APPRAISERS

No. 24,441-J

It Is Ordered That George E. Moore of 11936 Weddington Street, North Hollywood, California, F. W. Phillips of 237 S. Elm Drive, Beverly Hills, California, and Earl H. Depue of 11686 Ventura Boulevard, North Hollywood, California, three disinterested persons, be, and they are appointed appraisers to appraise the real and personal property belonging to the within estate, and report their appraisal to the Court at a compensation not exceeding $10.00 per day each, said appraisal to be made as soon as may be, and the said appraisers to be duly sworn.

Witness my hand this 21st day of June, 1938.

C. P. VON HERZEN,
Referee in Bankruptcy.

State of California,
County of Los Angeles—ss.

Personally appeared the within named appraisers and severally made oath that they will fully and fairly appraise the aforesaid real and personal property according to their best skill and judgment.

GEORGE E. MOORE
F. W. PHILLIPS
EARL H. DEPUE

Subscribed and sworn to before me this 21st day of June, 1938.

C. P. VON HERZEN,
Conciliation Commissioner. [34]

We, the undersigned, having been notified that we were appointed to estimate and appraise the real and personal property aforesaid, have attended to the duties assigned us, and after strict examination and careful inquiry we do estimate and appraise the same as follows:

Parcel #1—East 9.7 acres of Lot 11; West 4.85 acres of the Northwest quarter of Lot 12; East 4.85 acres of Northwest quarter of Lot 12; Southwest one-half of Lot 12; Subdivision No. 1 of the property of the Porter Land and Water Co., as per map recorded in Book 31, page 3-6 of Miscellaneous Records of Los Angeles County, State of California, all in Section 19,

Township 2 North, Range 15 West, S. B. B. & M. (approximately 30 acres) ..... $33,000—

#2—Lots 698 and 699, in Tract No. 1000, except the southerly 1320 feet thereof, as per map recorded in book 19, pages 1-34 of Maps, Records of Los Angeles County, State of California ..... $22,300—

(34 acres)

#3—Lot 727, Tract No. 1000, as per map recorded in Book 19, pages 1-34 of Maps, Records of Los Angeles County, State of California ..... $12,000—

(20 acres)

#4—Lots 210 and 211, and Lot 233, with exception of streets, Zelzah Tract, as per map recorded in Book 16, pages 94-95 of Maps, Records of Los Angeles County, State of California ..... $20,000—

(32 acres)

Encumbrances:

Parcels Nos. 1 and 2: Trust deeds in favor of California Bank, securing payment of notes for $50,000, $10,000 and $3,566.93.

Parcel No. 3: Trust deed in favor of California Bank, securing payment of note for $8,000.

Parcel No. 4: Trust deed in favor of California Bank, securing payment of note for $16,000.

: Farming land in Lafayette Township, Coles County, Illinois, described as NE S W and NW S E; All SW N of R. R. and 5 47/A in N. E

cor.; S E N W and 6 A N side; S side S W N E; and N end SW, SE, N of R. R., all in Section 19, Township 12, Range 8.....$———

Encumbrances:

Mortgage in favor of John Hancock Mutual Life Insurance Company, Chicago Loan Agency, Chicago, Illinois, for the sum of $15,000.

Personal Property:

Household goods, etc., horses, cows and other animals, carriages and other vehicles, farming stock and implements, stocks, negotiable bonds, etc. and policies of insurance.....$1,000—

In Witness Whereof, we have hereunto set our hands at Los Angeles, California, this 21st day of June, 1938.

GEORGE E. MOORE
F. W. PHILLIPS
EARL H. DEPUE

Appraisers.

[Endorsed]: Filed 12:56 P.M. Jun. 7, 1939. R. S. Zimmerman, Clerk. By R. B. Clifton, Deputy Clerk. [35]

[Title of District Court and Cause.]

PETITION FOR LEAVE TO SELL UNDER DEEDS OF TRUST

To the Honorable William P. James, Judge of the United States District Court:

The Petition of California Bank, a Banking Corporation, respectfully shows:

I.

That Petitioner is now and at all times herein mentioned as to it was a Banking Corporation, duly organized and existing under and by virtue of the laws of the State of California, with its principal office in the City of Los Angeles, California.

II.

That on or about the 24th day of January, 1927, Franz J. Borchard, and Frieda W. Borchard, the above named debtors, made, executed and delivered to Petitioner or order, at Los Angeles, California, their certain Promissory Note, in words and figures, following, to-wit: [36]

"50,000.00 Los Angeles, California, January 24th, 1927.....Three (3) years..... after date, for value received,.....we, jointly and severally.....promise to pay to CALIFORNIA BANK, a corporation, or order, at its Banking House in the City of Los Angeles, the sum of Fifty Thousand and no/100..... Dollars, with interest from.....date.....

until paid, at the rate of seven (7) per cent. per annum, payable .....quarterly..... Should the interest not be so paid it shall thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Should an attorney be employed to procure payment hereof by suit or otherwise, I agree to pay a reasonable sum as attorney's fees therefor. Principal and interest payable in gold coin of the United States of the present standard. This note is secured by a certain DEED OF TRUST to CALIFORNIA TRUST COMPANY, a corporation.

FRANZ J. BORCHARD
FRIEDA W. BORCHARD"

III.

That on or about the 24th day of January, 1927, said debtors, for the purpose of securing the payment of said Note according to the tenor thereof, made, executed and delivered to California Trust Company, a California Corporation, as Trustee, a certain Deed of Trust, which Deed of Trust was duly acknowledged and [37] certified so as to entitle it to be recorded and the same was thereafter, to-wit, on or about the 26th day of April, 1927, duly recorded in Book 7301 at Page 71 of Official Records of Los Angeles County, California; that a copy

of said Deed of Trust with its endorsements thereon is hereunto annexed, marked EXHIBIT A, and by reference made a part hereof.

That on or about the 10th day of November, 1927, Franz J. Borchard, and Frieda W. Borchard, the above named debtors, made, executed and delivered to Petitioner or order, at Los Angeles, California, their certain Promissory Note, in words and figures, following, to-wit:

"$10,000.00 Los Angeles, California; November 10th, 1927. On January 24th, 1930, for value received, we, jointly and severally, promise to pay to CALIFORNIA BANK, a corporation, or order, at its Banking House in the City of Los Angeles, the sum of Ten Thousand and no/100 Dollars, with interest from date hereof until paid, at the rate of seven (7) per cent. per annum, payable on January 24th, 1928 and quarterly thereafter.

Should the interest not be so paid, it shall become a part of the principal and thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in gold coin of the United States of the present standard. This note is secured by a

certain Deed of Trust to California Trust Company, a corporation.

FRANZ J. BORCHARD
FRIEDA W. BORCHARD" [38]

That the aforesaid Promissory Note is secured by the Deed of Trust hereinabove referred to in this paragraph, copy of which is hereunto annexed, marked EXHIBIT 'A, and by reference made a part hereof.

IV.

That on or about the 8th day of November, 1927, Franz J. Borchard, and Frieda W. Borchard, the above named debtors, made, executed and delivered to Petitioner or order, at Los Angeles, California, their certain Promissory Note, in words and figures, following, to-wit:

"$8000.00 Los Angeles, California, November 8th, 1927.....Three (3) Years.....after date, for value received,.....we, jointly and severally,.....promise to pay to CALIFORNIA BANK, a corporation, or order, at its Banking House in the City of Los Angeles, the sum of.....Eight Thousand and no/100 .....Dollars, with interest from date hereof until paid, at the rate of.....seven (7)..... per cent. per annum, payable.....quarterly .....Should the interest not be so paid it shall thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, then

the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Should an attorney be employed to procure payment hereof by suit or otherwise, I agree to pay a reasonable sum as attorney's fees therefor. Principal and interest payable in gold coin of the United States of the [39] present standard. This note is secured by a certain DEED OF TRUST to CALIFORNIA TRUST COMPANY, a corporation.

FRANZ J. BORCHARD
FRIEDA W. BORCHARD"

V.

That on or about the 8th day of November, 1927, said debtors, for the purpose of securing the payment of said Note according to the tenor thereof, made, executed and delivered to California Trust Company, a California Corporation, as Trustee, a certain Deed of Trust, which Deed of Trust was duly acknowledged and certified so as to entitle it to be recorded and the same was thereafter, to-wit, on or about the 2nd day of December, 1927, duly recorded in Book 8084 at Page 65 of Official Records of Los Angeles County, California; that a copy of said Deed of Trust with its endorsements thereon is hereunto annexed, marked EXHIBIT B, and by reference made a part hereof.

VI.

That on or about the 30th day of November, 1928, Franz J. Borchard, and Frieda W. Borchard, the above named debtors, made, executed and delivered to Petitioner or order, at Los Angeles, California, their certain Promissory Note, in words and figures, following, to-wit: [40]

"$16,000.00 Los Angeles, California, November 30, 1928. At the times and in the manner hereinafter specified for value received, we, jointly and severally promise to pay to CALIFORNIA BANK, a corporation, or order, at its Banking House in the City of Los Angeles, the sum of Sixteen Thousand and no/100 Dollars, with interest on unpaid principal from date hereof until paid, at the rate of Seven (7) per cent. per annum, payable Quarterly . Should the interest not be so paid it shall thereafter bear like interest as the principal. Should default be made in the payment of any installment of principal or interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Should an attorney be employed to procure payment hereof by suit or otherwise, I agree to pay a reasonable sum as attorney's fees therefor. Principal and interest payable in gold coin of the United States of the present standard. This note is secured by a certain DEED OF TRUST

to CALIFORNIA TRUST COMPANY, a corporation.

The above principal sum of $16,000.00 will be due and payable as follows:

$2000.00 thereof on November 30th, 1929;
$2000.00 thereof on November 30th, 1930;
and the remaining $12,000.00 thereof on November 30th, 1931.

FRANZ J. BORCHARD
FRIEDA W. BORCHARD" [41]

VII.

That on or about the 30th day of November, 1928, said debtors, for the purpose of securing the payment of said Note according to the tenor thereof, made, executed and delivered to California Trust Company, a California Corporation, as Trustee, a certain Deed of Trust, which Deed of Trust was duly acknowledged and certified so as to entitle it to be recorded and the same was thereafter, to-wit, on or about the 9th day of January, 1929, duly recorded in Book 8920 at Page 317 of Official Records of Los Angeles County, California; that a copy of said Deed of Trust with its endorsements thereon is hereunto annexed, marked EXHIBIT C, and by reference made a part hereof.

VIII.

That on or about the 19th day of June, 1933, Franz J. Borchard, and Frieda W. Borchard, the above named debtors, made, executed and delivered

to Petitioner or order, at Los Angeles, California, their certain Promissory Note, in words and figures, following, to-wit:

"$3,566.93 Los Angeles, California, June 19th, 1933. * * * On demand * * * after date, for value received, we, jointly and severally, promise to pay to CALIFORNIA BANK, a corporation, or order, at its Banking House in the City of Los Angeles, the sum of * * * Three Thousand Five Hundred Sixty-six and 93/100 * * * Dollars, with interest from date hereof until paid, at the rate of seven (7) per cent. per annum, payable on demand. Should the interest not be so paid it shall [42] thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Should an attorney be employed to procure payment hereof by suit or otherwise, I agree to pay a reasonable sum as attorney's fees therefor. Principal and interest payable in gold coin of the United States of the present standard. This note is secured by a certain DEED OF TRUST to CALIFORNIA TRUST COMPANY, a corporation.

FRANZ J. BORCHARD
FREEDA W. BORCHARD"

IX.

That on or about the 19th day of June, 1933, said debtors, for the purpose of securing the payment of said Note according to the tenor thereof, made, executed and delivered to California Trust Company, a California Corporation, as Trustee, a certain Deed of Trust, which Deed of Trust was duly acknowledged and certified so as to entitle it to be recorded and the same was thereafter, to-wit, on or about the 21st day of June, 1933, duly recorded in Book 12218 at Page 217 of Official Records of Los Angeles County, California; that a copy of said Deed of Trust with its endorsements thereon is hereunto annexed, marked EXHIBIT D, and by reference made a part hereof. [43]

X.

That on or about the 30th day of January, 1934, said debtors, in order to further secure their indebtedness owing to Petitioner, made, executed and delivered to Petitioner, that certain Mortgage of Crops, which Mortgage of Crops was duly acknowledged and certified so as to entitle it to be recorded, and the same was thereafter, to-wit, on or about the 30th day of April, 1934, duly recorded in Book 12769 at Page 105 of Official Records of Los Angeles County, California, and re-recorded on the 13th day of October, 1937, in Book 15278 at Page 252 of Official Records of Los Angeles County, California; that a copy of said Mortgage of Crops with its endorsements thereon is hereunto annexed,

marked EXHIBIT E, and by reference made a part hereof.

XI.

That on the 14th day of January, 1935, by reason of certain defaults then existing in the performance of the obligations of said debtors, under the aforesaid Promissory Notes and Deeds of Trust, securing the same, Petitioner exercised its option and declared the full amount of the indebtedness, secured by said Deeds of Trust, to be immediately due and payable; that in accordance with the provisions of Sec. 2924 of the Civil Code of the State of California, and on the 23rd day of January, 1935, Petitioner caused to be recorded in the office of the County Recorder of the County of Los Angeles, State of California, Notices of Default and of its election to cause the property described in said Deeds of Trust to be sold in accordance with the provisions thereof to satisfy such obligations. [44]

XII.

That prior to the 23rd day of January, 1935, to-wit, on or about the 17th day of November, 1934, said debtors caused to be instituted in this Court proceedings under Sec. 75 of the Bankruptcy Act, which said proceedings were thereafter, to-wit, on or about the 19th day of November, 1934, referred by this Court to the Conciliation Commissioner for Los Angeles County; that thereafter, said debtors having failed to obtain the acceptance of the majority in number and amount of all creditors af-

fected by the composition and extension proposal submitted by said debtors, amended their Petitions under the provisions of Sec. 75, subsection (s) of the Bankruptcy Act, and prayed to be adjudicated bankrupt, which adjudication of the bankruptcy of said debtors was thereafter entered by this Court on or about the 6th day of May, 1935; that thereafter, to-wit, on or about the 26th day of June, 1935, an order was entered by this Court dismissing said proceedings because of the decision of the Supreme Court of the United States in Louisville Joint Stock Land Bank vs. Radford, 79 L. Ed. 1593, holding subsection (s) of Sec. 75 of the Bankruptcy Act unconstitutional.

XIII.

That prior to the entry of the aforesaid Order of Dismissal by this Court, said debtors caused to be instituted a proceeding under the Mortgage and Trust Deed Moratorium Act of the State of California, entitled "In the Matter of the Petition of Franz J. Borchard and Frieda W. Borchard, Petitioning Debtors", being No. 389582 in the files and records of the Superior Court of the State of California, in and for the County of Los Angeles; that thereafter, on or about the 30th day of July, 1935, said Superior [45] Court entered an order extending Moratorium relief to said debtors upon prescribed terms and conditions; that thereafter, to-wit, on or about the 26th day of September, 1935, Petitioner herein moved said Superior Court for its

order, vacating and setting aside the Moratorium order therefore made and dismissing said proceeding upon the ground that it appeared that at the time of the institution of said proceeding by said debtors, the proceedings then pending in this Court under the Bankruptcy Act had not been finally disposed of and said Superior Court was therefore without jurisdiction to make said Moratorium order; that thereafter, to-wit, on the 30th day of September, 1935, said Superior Court vacated and set aside said Moratorium order and dismissed said Moratorium proceeding upon the grounds above stated.

XIV.

That prior to the entry of said order by the Superior Court, vacating the said Moratorium order, to-wit, on or about the 20th day of September, 1935, said debtors filed in this Court in the within proceeding a "Petition for Reinstatement of Proceedings" and thereafter, on the 20th day of September, 1935, this Court made and entered herein an "Order for Reinstatement and Restraining Order" by the terms of which Petitioner was enjoined and restrained until the further order of this Court from selling or causing to be sold or proceeding with or conducting a sale of the property described in said Order, which said property included all of the said property described in and encumbered by the Deeds of Trust hereinabove mentioned, securing the indebtedness of said debtors to Petitioner; that said Order for Reinstatement and Restraining Or-

der further enjoined and restrained Petitioner until the further order of this Court from collecting or receiving any of the proceeds of the sugar beet crops and citrus crop grown upon said property, which crops [46] and all other crops, are covered by the Mortgage of Crops, hereinabove described in Paragraph X hereof.

XV.

That more than three years have now elapsed since the date of said Order for Reinstatement and Restraining Order; that the total indebtedness of said debtors to Petitioner is now in excess of Eighty-nine Thousand Dollars ($89,000.00); that a true and correct statement of the present condition of the loans held by Petitioner is attached hereto, marked EXHIBIT F, and by reference made a part hereof, showing in detail the numerous advancements made by Petitioner for the protection of the property securing said loans, to pay taxes, insurance premiums and bond installments.

XVI.

That the second one-half of taxes for the fiscal year 1937-1938 are delinquent and unpaid upon said real property in a sum exceeding Nine Hundred and Twenty-five Dollars ($925.00); that taxes for the fiscal year 1938-1939 are now a lien upon said real property and the amount required to pay the same in full is the sum of One Thousand Seven Hundred Sixty-three and 26/100 Dollars ($1,763.26).

XVII.

That for more than three years last past the total amount of indebtedness owing to Petitioner by said debtors, has steadily increased until at the date hereof, the total amount of increase in said indebtedness since the inception of the within proceeding now amounts to approximately Twenty-five Thousand Dollars ($25,000.00); that a true and correct statement of the total amount of said [47] indebtedness for each year, commencing with the year in which this proceeding was instituted, to and including the current year 1938, is set forth below:

Date	Total Amount of Indebtedness
October 26, 1934	$65,735.27
October 26, 1935	70,826.21
October 26, 1936	74,805.61
October 26, 1937	81,437.92
October 26, 1938	89,246.82

XVIII.

That the total indebtedness of said debtors to Petitioner has now increased to a point where it exceeds the total amount for which the real property securing Petitioner's said loans was appraised by the appraisers appointed by the Honorable C. P. Von Herzen, Conciliation Commissioner, which appraisal is as follows:

	Appraised Value
Parcel 1. Plummer Street, North Los Angeles, California (30 acres)	$33,000.00
Parcel 2. Reseda Avenue, North Los Angeles, California (34 acres)	$22,300.00
Parcel 3. Saticoy Street, Reseda, California (19 acres)	$12,000.00
Parcel 4. Roscoe Street, Zelzah, California (33 1/3 acres)	$20,000.00
	$87,300.00

[48]

XIX.

That for more than three years last past said debtors have been and now are unable to financially rehabilitate themselves or to refinance said loans so held by Petitioner; that Petitioner in informed and believes, and therefore alleges, that said debtors will be unable to financially rehabilitate themselves or refinance said loans in the future; that Petitioner is informed and believes, and therefore alleges, that the constant increase of the indebtedness of said debtors to Petitioner, for more than three years last past, has now destroyed any possibility of such rehabilitation or refinancing; that further proceedings under Sec. 75 (s) of the Bankruptcy Act cannot have any effect beyond postponing inevitable liquidation, to the expense and damage and irreparable loss of Petitioner; that Petitioner in informed and believes, and upon such in-

formation and belief alleges that the property securing the said loans cannot now be sold for a sum that would produce in excess of Sixty-five Thousand Dollars ($65,000.00); that Petitioner's loss at this time is estimated to be approximately Twenty-five Thousand Dollars ($25,000.000), being the difference between the amount for which said property could be sold, and the amount due on Petitioner's loans; that such estimated loss is approximately equal to the increase in the amount due Petitioner which has accrued and become payable between the date of the commencement of the debtors proceedings under the former Sec. 75 (s), and the present date; that there is no equity, whatever, in the real property securing Petitioner's said loans, either in the Bankruptcy Estate or the debtors herein; that unless Petitioner is now permitted to realize upon its security its loss will continue to increase each year at approximately the same rate it has increased during the past four years, to-wit, approximately Six Thousand Dollars ($6,000.00) a year, and Petitioner will sustain further great and irreparable loss [49] and will be deprived of its property and contract rights without due process of law and without just compensation contrary to the provisions of the Constitution of the United States.

Wherefore, Petitioner, California Bank, prays that this Honorable Court make its order dissolv-

ing the Restraining or Stay Order heretofore made herein, and authorizing and permitting Petitioner, California Bank, to proceed with the sale of the real property described in the Deeds of Trust attached hereto, marked Exhibits A, B, C and D, and by reference made a part of this Petition, and authorizing and permitting Petitioner to proceed to collect and receive the crops and all proceeds of all crops grown upon said real property; and authorizing and permitting Petitioner to enforce the terms and provisions of said Promissory Notes, Deeds of Trust, and Mortgage of Crops, and to realize upon the security which Petitioner holds for the indebtedness of said debtors, Franz J. Borchard and Frieda W. Borchard, to Petitioner, California Bank; and for such other and further relief as the Court deems proper.

Dated: November 5, 1938.

Respectfully submitted,
CALIFORNIA BANK
By J. B. CHAFFEY,
Vice President.

Approved:
SWANWICK, DONNELLY & PROUDFIT
By TOM W. HENDERSON
Attorneys for Petitioner,
California Bank. [50]

EXHIBIT A

DEED OF TRUST

With Power of Sale

Franz J. Borchard, et ux. to California Trust Company as Trustee for California Bank, a Corporation.

Dated January 24th, 1927

"A" & "C" Notes extended to 1-24-33.

Additional loan under BRS-21243 "B" for $5,000.00 dated 3-9-27 due 1-24-30; interest at 7% payable 4-24-27 and qtrly thereafter. Pd. 10/25/27

Additional loan under BRS-21243 "C" for $10,000.00 dated 11-10-27 due 1-24-30; interest at 7% per annum, payable 1-24-28 & qtrly thereafter.

—469

Order No. 970436

When Recorded Please Mail to California Bank. 625 So. Spring St. Los Angeles, California.

Compared: Read by Baker, Document Dillon.

Recorded at request of Title Insurance & Tr. Co. Apr. 26, 1927 at 8:30 A.M. in Book 7501 Page 71 of Official Records, Los Angeles County, Cal.

C. L. LOGAN,
County Recorder.

I certify that I have correctly transcribed this document in above mentioned book.

L. [Illegible]
Copyist County Recorder's
Office, L. A. County, Cal.

DEED OF TRUST

This Deed of Trust, Made this 24th day of January, 1927, between Franz J. Borchard and Frieda W. Borchard, his wife, who acquired title to a portion of the hereinafter described property as Franz John Borchard and Frieda Wucherpfennig Borchard, also known as Freda Wuckerfinning Borchard, his wife; herein called Trustor, California Trust Company, a corporation, of Los Angeles, California, herein called Trustee, and California Bank, a corporation of Los Angeles, California, herein called Beneficiary,

Witnesseth: That Trustor hereby Grants to Trustee, in Trust, with Power of Sale, all that property in the City of Los Angeles, County of Los Angeles, State of California, described as:

Parcel 1: The East Quarter (E¼) of Lot Eleven (11) and the West Half (W½) of Lot Twelve (12), of Section Nineteen (19), of Subdivision Number One (1) of the Property of the Porter Land and Water Company; as per map recorded in Book 31, Page 3, et seq., Miscellaneous Records of said County.

Parcel 2: Lots Six Hundred Ninety-eight (698) and Six Hundred Ninety-nine (699) of Tract Number One Thousand (1000); as per map recorded in Book 19, Pages 1 to 34, inclusive, of Maps in the office of the County Recorder of said County; Excepting from said lots the South Thirteen Hundred Twenty (1320) Feet thereof.

Parcel 3: Lots Six Hundred Ninety-six (696) and Six Hundred Ninety-seven (697) of Tract Number One Thousand (1000); as per map recorded in Book 19, Pages 1 to 34, inclusive of Maps, in the office of the County Recorder of said County.

Excepting: The waters of the Los Angeles River as owned by the City of Los Angeles.

[This parcel has been released—Mac S., 10/25/27] including all buildings and improvements thereon or that may be erected thereon; together with all and singular the tenements, hereditaments and appurtenances, water and water rights, pumps and pumping plants, pipes, flumes and ditches thereunto belonging or in anywise appertaining, and all shares of corporate stock evidencing the same, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. [51]

For the Purpose of Securing:

First. Payment of the indebtedness evidenced by One (1) promissory note (and any renewal or extension thereof) substantially in form as follows: $50,000.00 Los Angeles, California, January 24th, 1927. Three (3) years after date, for value received, we jointly and severally promise to pay to California Bank, a corporation, or order, at its Banking House in the City of Los Angeles, the sum of Fifty Thousand and no/100 Dollars, with interest from date until paid, at the rate of seven (7) per cent. per annum, payable quarterly. Should the interest not be so paid it shall thereafter bear like

interest as the principal. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Should an attorney be employed to procure payment hereof by suit or otherwise, I agree to pay a reasonable sum as attorney's fees therefor. Principal and interest payable in gold coin of the United States of the present standard. This note is secured by a certain Deed of Trust to California Trust Company, a corporation.

FRANZ J. BORCHARD
FRIEDA W. BORCHARD

Second. Payment of such additional sums not to exceed $25,000.00, with interest thereon, as may be hereafter borrowed from the Beneficiary by the Trustor, when evidenced by another promissory note or notes, certified by the Trustee as being secured hereby; provided, however, that the right to make such additional loans hereunder shall apply solely to the original parties hereto and not to their heirs, devisees, successors or assigns:

Third. Payment and/or performance of every obligation, covenant, promise or agreement herein contained.

To Have and to Hold Said Property Upon the Following Express Trusts, to-wit:

A. Trustor promises and agrees, during continuance of these Trusts:

1. For the purpose of protecting and preserving the security of this Deed of Trust: (a) to properly care for and keep said property in good condition and repair; (b) not to remove or demolish any building thereon; (c) to complete in good and workmanlike manner any building which may be constructed thereon, and to pay when due all claims for labor performed and materials furnished therefor; (d) to comply with all laws, ordinances and regulations requiring any alterations or improvements to be made thereon, (e) not to commit or permit any waste or deterioration thereof; (f) not to commit, suffer or permit any act to be done in or upon said property in violation of any law or ordinance; (g) to cultivate, irrigate, fertilize, fumigate, prune and/or do any other act or acts, all in a timely and proper manner, which, from the character or use of said property, may be reasonably necessary to protect and preserve said security, the specific enumerations herein not excluding the general.

2. To provide insurance against loss by fire or earthquake satisfactory to and with loss, if any, payable to the Beneficiary; to deliver the policies of said insurance to the Beneficiary, it being agreed that in the event of a loss the amount collected under any policy of fire insurance on said property may, at the option of the Beneficiary, be credited, first, upon the interest due, if any, upon any sum mentioned as secured hereby; next, upon the prin-

cipal sums of any advances made hereunder; next, upon the principal sum of the original indebtedness mentioned as secured hereby, and the remainder, if any, upon the principal of any additional loans made hereunder, and interest shall thereupon cease upon any amount so credited upon any of said principal sums; or said amount or any portion thereof may, at the option of the Beneficiary, either be used in replacing or restoring the improvements partially or totally destroyed to a condition satisfactory to said Beneficiary or be released to the Trustor, in either of which events neither the Trustee nor the Beneficiary shall be obligated to see to the proper application thereof; nor shall the amount so released be deemed a payment on any indebtedness secured hereby.

3. To appear in and to defend any action or proceedings purporting to affect the security of this Deed of Trust, the interests of Beneficiary or the rights, powers and duties of Trustee hereunder; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary and/or Trustee may appear.

4. To deliver forthwith to the Beneficiary any and all certificates or other evidence of title which the Trustor may secure through any proceedings for the registration of the title to said property, or otherwise, to be held by it during the life of this Deed of Trust.

5. To pay before default or delinquency: (a) all taxes, assessments or incumbrances (including any debt secured by Deed of Trust), which appear to be prior liens or charges upon said property or any part thereof, including assessments on appurtenant water stock and any accrued interest, cost or penalty thereon; (b) all costs, fees and expenses of these Trusts, including cost of evidence of title and Trustee's fees in connection with sale, whether completed or not, which amounts shall become due upon delivery to Trustee of Declaration of Default and Demand for Sale, as hereinafter provided.

6. To pay before delinquency all assessments upon the stock of any Water Company which stock may be used in connection with said property, and all rents, assessments or charges for water appurtenant to or used in connection with said property or for the flumes, ditches, pipes or aqueducts in which such water may be furnished or delivered; and all such stock is hereby expressly made a part of the security hereof.

7. To pay within thirty days after expenditure, without demand, all sums expended by Trustee or Beneficiary under the terms hereof, with interest from date of expenditure at the rate of ten per cent per annum.

8. Should Trustor fail or refuse to make any payment or do any act, which he is obligated hereunder to make or do, at the time and in the man-

ner herein provided, then Trustee and/or Beneficiary, each in his sole discretion, may, without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof:

1. Make or do the same in such manner and to such extent as may be deemed necessary to protect the security of this Deed of Trust, either Trustee or Beneficiary being authorized to enter upon and take possession of said property for such purposes.

2. Commence, appear in or defend any action or proceeding affecting or purporting to affect the security of this Deed of Trust, the interests of Beneficiary or the rights, powers and duties of Trustee hereunder, whether brought by or against Trustor, Trustee or Beneficiary; or

3. Pay, purchase, contest or compromise any prior claim, debt, lien, charge or incumbrance which in the judgment of either may affect or appear to affect the security of this Deed of Trust, the interests of Beneficiary or the rights, powers and duties of Trustee hereunder.

Provided, that neither Trustee nor Beneficiary shall be under any obligation to make any of the payments or do any of the acts above mentioned, but, upon election of either or both so to do, employment of an attorney is authorized and payment of such attorney's fees is hereby secured.

C. Trustee shall be under no obligation to notify any party hereto of any action or proceeding of any kind in which Trustor, Beneficiary and/or

Trustee shall be named as defendant, unless brought by Trustee.

D. Acceptance by Beneficiary of any sum in payment of any indebtedness secured hereby, after the date when the same is due, shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums so secured or to declare default as herein provided for failure so to pay.

E. Trustee may, at any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of said property:

1. Reconvey any part of said property;

2. Consent in writing to the making of any map or plat thereof; or

3. Join in granting any easement thereon.

F. Upon payment of all sums secured hereby and surrender to Trustee, for cancellation, of this Deed of Trust and the note secured hereby, Trustee, upon receipt from Beneficiary of a written request reciting the fact of such payment and surrender, shall reconvey, without warranty, the estate then held by Trustee and the grantee in such reconveyance may be described in general terms as "the per-

son or persons legally entitled thereto," and Trustee is authorized to retain this Deed of Trust and such note. The recitals in such reconveyance of any matters or facts shall be conclusive proof against all persons of the truthfulness thereof.

G. 1. Should breach or default be made by Trustor in payment of any indebtedness and/or in performance of any obligation, covenant, promise or agreement herein mentioned, then Beneficiary may declare all sums secured hereby immediately due, and in such case, shall execute and deliver to Trustee a written Declaration of Default and Demand for Sale and shall surrender to Trustee this Deed of Trust, the note and receipts or other documents evidencing any expenditure secured hereby. Thereafter there shall be recorded in the office of the recorder of the county or counties wherein said real property or some part thereof is situated, a notice of such breach or default and of election to sell or cause to be sold the herein described property to satisfy the obligations hereof.

2. After three months shall have elapsed following such recordation of said notice, Trustee, without demand on Trustor, shall sell said property as herein provided, having first given notice of the time and place of such sale in the manner and for a time not less than that required by the laws of the State of California for sales of real property under Deeds of Trust.

3. Trustee may postpone sale of all, or any portion, of said property by public announcement at

the time fixed by said notice of sale, and may thereafter postpone said sale from time to time by public announcement at the time fixed by the preceding postponement; and without further notice it may make such sale at the time to which the same shall be so postponed, provided, however, that the sale or any postponement thereof must be made at the place fixed by the original notice of sale.

4. At the time of sale so fixed, Trustee may sell the property so advertised, or any part thereof, either as a whole or in separate parcels at its sole discretion, at public auction, to the highest bidder for cash in United States gold coin, all payable at time of sale, and after any such sale and due payment made, shall execute and deliver to such purchaser a deed or deeds conveying the property so sold, but without covenant or warranty, express or implied, regarding title, possession or incumbrances, whereupon such purchaser or purchasers shall be let into immediate possession of said property, and all other persons in possession thereof shall be deemed to be tenants at suffrance; and the recitals in such deed or deeds of any matters or facts affecting the regularity or validity of said sale shall be conclusive proof of the truthfulness thereof and such deed or deeds shall be conclusive against all persons as to all matters or facts therein recited. Trustee, Beneficiary, any person on behalf of either, or any other person, may purchase at such sale.

H. Trustee shall apply the proceeds of any such sale to payment of:

1. (a) Expenses of sale; (b) all costs, fees, charges and expenses of Trustee and of these Trusts, including cost of evidence of title and Trustee's fee in connection with sale.

2. All sums expended under the terms hereof, not then repaid, with accrued interest at the rate of ten per cent per annum.

3. Accrued interest on said note.

4. Unpaid principal of said note; or if more than one, the unpaid principal thereof pro rata and without preference or priority; and

5. The amount due and unpaid on any additional sums, borrowed in accordance with the provisions hereof, together with the interest accrued thereon.

6. The remainder if any to the person or persons legally entitled thereto, upon proof of such right.

I. This Deed of Trust in all its parts, except as herein otherwise provided, applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

J. Trustee accepts these Trusts when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

The right to plead any and all statutes of limitations as a defense to any demand secured by this Deed of Trust is hereby waived.

In this Deed of Trust, whenever the context so requires, the masculine gender includes the femin-

ine and/or neuter, and the singular number includes the plural.

Witness the hand of Trustor, the day and year first above written.

FRANZ J. BORCHARD
FRIEDA W. BORCHARD

State of California,
County of Los Angeles—ss.

On this 24th day of January, 1927, before me, the undersigned, a Notary Public in and for said County, personally appeared Franz J. Borchard and Frieda W. Borchard, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

Witness my hand and official seal.

[Notarial Seal] GLADWYNNE ACKER,
Notary Public in and for said
County and State. [52]

EXHIBIT B

DEED OF TRUST

With Power of Sale

Franz J. Borchard et ux. to California Trust Company as Trustee for California Bank, a corporation.

Dated November 8th, 1927
Extended to 11-8-33.

Order No. 1027366

When Recorded Please Mail to: California Bank, 625 So. Spring St., Los Angeles, California.

Compared: Read by Newman. Document Eads.

Recorded at request of Title Insurance & Tr. Co. Dec. 2, 1927 at 8:30 A.M. in Book 8084 Page 65 of Official Records, Los Angeles County, Cal.

C. L. LOGAN,
County Recorder.

I certify that I have correctly transcribed this document in above mentioned book.

H. ROSS,
Copyist County Recorder's
Office L. A. County, Cal.

DEED OF TRUST

This Deed of Trust, Made this 8th day of November, 1927, between Franz J. Borchard and Frieda W. Borchard, his wife, herein called Trustor, California Trust Company; a corporation; of Los Angeles, California, herein called Trustee, and Cali-

fornia Bank, a corporation, of Los Angeles, California, herein called Beneficiary.

Witnesseth: That Trustor hereby Grants to Trustee, in Trust, with Power of Sale, all that property in the City of Los Angeles, County of Los Angeles, State of California, described as:

> Lot Seven Hundred Twenty-seven (727) of Tract Number One Thousand (1000); as per map recorded in Book 19, Pages 1 to 34 inclusive, of Maps, in the office of the County Recorder of said County;

including all buildings and improvements thereon or that may be erected thereon; together with all and singular the tenements, hereditaments and appurtenances, water and water rights, pumps and pumping plants, pipes, flumes and ditches thereunto belonging or in anywise appertaining, and all shares of corporate stock evidencing the same, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. [53]

For the Purpose of Securing:

First. Payment of the indebtedness evidenced by one (1) promissory note (and any renewal or extension thereof) substantially in form as follows: $8000.00 Los Angeles, California, November 8th, 1927. Three (3) Years after date, for value received, we, jointly and severally, promise to pay to California Bank, a corporation, or order, at its Banking House in the City of Los Angeles, the sum of Eight Thousand and no/100 Dollars, with inter-

est from date hereof until paid, at the rate of seven (7) per cent. per annum, payable quarterly. Should the interest not be so paid it shall thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Should an attorney be employed to procure payment hereof by suit or otherwise, I agree to pay a reasonable sum as attorney's fees therefor. Principal and interest payable in gold coin of the United States of the present standard. This note is secured by a certain Deed of Trust to California Trust Company, a corporation.

FRANZ J. BORCHARD
FRIEDA W. BORCHARD

Second. Payment of such additional sums not to exceed $2800.00, with interest thereon, as may be hereafter borrowed from the Beneficiary by the Trustor, when evidenced by another promissory note or notes, certified by the Trustee as being secured hereby; provided, however, that the right to make such additional loans hereunder shall apply solely to the original parties hereto and not to their heirs, devisees, successors or assigns.

Third. Payment and/or performance of every obligation, covenant, promise or agreement herein contained.

To Have and to Hold Said Property Upon the Following Express Trusts, to-wit:

A. Trustor promises and agrees, during continuance of these Trusts:

1. For the purpose of protecting and preserving the security of this Deed of Trust: (a) to properly care for and keep said property in good condition and repair; (b) not to remove or demolish any building thereon; (c) to complete in good and workmanlike manner any building which may be constructed thereon, and to pay when due all claims for labor performed and materials furnished therefor; (d) to comply with all laws, ordinances and regulations requiring any alterations or improvements to be made thereon; (e) not to commit or permit any waste or deterioration thereof; (f) not to commit, suffer or permit any act to be done in or upon said property in violation of any law or ordinance; (g) to cultivate, irrigate, fertilize, fumigate, prune and/or do any other act or acts, all in a timely and proper manner, which, from the character or use of said property, may be reasonably necessary to protect and preserve said security, the specific enumerations herein not excluding the general.

2. To provide insurance against loss by fire and earthquake satisfactory to and with loss, if any, payable to the Beneficiary; to deliver the policies of said insurance to the Beneficiary, it being agreed that in the event of a loss the amount collected un-

der any policy of fire insurance on said property may, at the option of the Beneficiary, be credited, first, upon the interest due, if any, upon any sum mentioned as secured hereby; next, upon the principal sums of any advances made hereunder; next, upon the principal sum of the original indebtedness mentioned as secured hereby, and the remainder, if any, upon the principal of any additional loans made hereunder, and interest shall thereupon cease upon any amount so credited upon any of said principal sums; or said amount or any portion thereof may, at the option of the Beneficiary, either be used in replacing or restoring the improvements partially or totally destroyed to a condition satisfactory to said Beneficiary or be released to the Trustor, in either of which events neither the Trustee nor the Beneficiary shall be obligated to see to the proper application thereof; nor shall the amount so released be deemed a payment on any indebtedness secured hereby.

3. To appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust, the interests of Beneficiary or the rights, powers and duties of Trustee hereunder; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary and/or Trustee may appear. All moneys payable as compensation for the taking of or damage to any

portion of the property subject to the lien of this Deed of Trust by reason of any condemnation or eminent domain proceeding shall, at the option of the Trustee and/or Beneficiary, be paid to the Trustee and/or Beneficiary, to be used at its option toward the payment of any indebtedness, taxes, assessments, repairs or other items for the payment of which this Deed of Trust is given as security, whether the same be then due or not, and any amount not so used to be paid by the Trustee and/or Beneficiary to the Trustor.

4. To deliver forthwith to the Beneficiary any and all certificates or other evidence of title which the Trustor may secure through any proceeding for the registration of the title to said property, or otherwise, to be held by it during the life of this Deed of Trust.

5. To pay before default or delinquency: (a) all taxes, assessments or incumbrances (including any debt secured by Deed of Trust), which appear to be prior liens or charges upon said property or any part thereof, including assessments on appurtenant water stock, and any accrued interest, cost or penalty thereon; (b) all costs, fees and expenses of these Trusts, including cost of evidence of title and Trustee's fees in connection with sale, whether completed or not, which amounts shall become due upon delivery to Trustee of Declaration of Default and Demand for Sale, as hereinafter provided.

6. To pay before delinquency all assessments upon the stock of any Water Company which stock

may be used in connection with said property, and all rents, assessments or charges for water appurtenant to or used in connection with said property or for the flumes, ditches, pipes or aqueducts in which such water may be furnished or delivered; and all such stock is hereby expressly made a part of the security hereof.

7. To pay within thirty days after expenditure, without demand, all sums expended by Trustee or Beneficiary under the terms hereof, with interest from date of expenditure at the rate of ten per cent. per annum.

B. Should Trustor fail or refuse to make any payment or do any act, which he is obligated hereunder to make or do, at the time and in the manner herein provided, then Trustee and/or Beneficiary, each in his sole discretion, may, without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof:

1. Make or do the same in such manner and to such extent as may be deemed necessary to protect the security of this Deed of Trust, either Trustee or Beneficiary being authorized to enter upon and take possession of said property for such purposes.

2. Commence, appear in or defend any action or proceeding affecting or purporting to affect the security of this Deed of Trust, the interests of Beneficiary or the rights, powers and duties of Trustee hereunder, whether brought by or against Trustor, Trustee or Beneficiary, or

3. Pay, purchase, contest or compromise any prior claim, debt, lien, charge or incumbrance which in the judgment of either may affect or appear to affect the security of this Deed of Trust, the interests of Beneficiary or the rights, powers and duties of Trustee hereunder.

Provided, that, neither Trustee nor Beneficiary shall be under any obligation to make any of the payments or do any of the acts above mentioned, but upon election of either or both so to do, employment of an attorney is authorized and payment of such attorney's fees is hereby secured.

C. Trustee shall be under no obligation to notify any party hereto of any action or proceeding of any kind in which Trustor, Beneficiary and/or Trustee shall be named as defendant, unless brought by Trustee.

D. Acceptance by Beneficiary of any sum in payment of any indebtedness secured hereby, after the date when the same is due, shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums so secured or to declare default as herein provided for failure so to pay.

E. Trustee may, at any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this

Deed of Trust upon the remainder of said property:

1. Reconvey any part of said property;

2. Consent in writing to the making of any map or plat thereof; or

3. Join in granting any easement thereon.

F. Upon payment of all sums secured hereby and surrender to Trustee, for cancellation, of this Deed of Trust and the note secured hereby. Trustee, upon receipt from Beneficiary of a written request reciting the fact of such payment and surrender, shall reconvey without warranty, the estate then held by Trustee, and the Grantee in such reconveyance may be described in general terms as "the person or persons legally entitled thereto," and Trustee is authorized to retain this Deed of Trust and such note. The recitals in such reconveyance of any matters or facts shall be conclusive proof against all persons of the truthfulness thereof.

G. 1. Should breach or default be made by Trustor in payment of any indebtedness and/or in performance of any obligation, covenant, promise or agreement herein mentioned, then Beneficiary may declare all sums secured hereby immediately due, and in such case, shall execute and deliver to Trustee a written Declaration of Default and Demand for Sale and shall surrender to Trustee this Deed of Trust, the note and receipts or other documents evidencing any expenditure secured hereby. Thereafter there shall be recorded in the office of

the recorder of the county or counties wherein said real property or some part thereof is situated, a notice of such breach or default and of election to sell or cause to be sold the herein descriped property to satisfy the obligation hereof.

2. After three months shall have elapsed following such recordation of said notice, Trustee, without demand on Trustor, shall sell said property as herein provided, having first given notice of the time and place of such sale in the manner and for a time not less than that required by the laws of the State of California for sales of real property under Deeds of Trust.

3. Trustee may postpone sale of all, or any portion, of said property by public announcement at the time fixed by said notice of sale, and may thereafter postpone said sale from time to time by public announcement at the time fixed by the preceding postponement; and without further notice it may make such sale at the time to which the same shall be so postponed, provided, however, that the sale or any postponement thereof must be made at the place fixed by the original notice of sale.

4. At the time of sale so fixed, Trustee may sell the property so advertised, or any part thereof, either as a whole or in separate parcels at its sole discretion, at public auction, to the highest bidder for cash in United States gold coin, all payable at time of sale, and after any such sale and due payment made, shall execute and deliver to such purchaser a deed or deeds conveying the property so

sold, but without covenant or warranty, express or implied, regarding title, possession or incumbrances, whereupon such purchaser or purchasers shall be let into immediate possession of said property, and all other persons in possession thereof shall be deemed to be tenants at suffrance; and the recitals in such deed or deeds of any matters or facts affecting the regularity or validity of said sale shall be conclusive proof of the truthfulness thereof and such deed or deeds shall be conclusive against all persons as to all matters or facts therein recited. Trustee, Beneficiary, any person on behalf of either, or any other person, may purchase at such sale.

H. Trustee shall apply the proceeds of any such sale to payment of:

1. (a) Expenses of sale; (b) all costs, fees, charges and expenses of Trustee and of these Trusts, including cost of evidence of title and Trustee's fee in connection with sale.

2. All sums expended under the terms hereof, not then repaid, with accrued interest at the rate of ten per cent. per annum.

3. Accrued interest on said note.

4. Unpaid principal of said note; or if more than one, the unpaid principal thereof pro rata and without preference or priority; and

5. The amount due and unpaid on any additional sums, borrowed in accordance with the provisions hereof, together with the interest accrued thereon.

6. The remainder if any to the person or persons legally entitled thereto, upon proof of such right.

I. This Deed of Trust in all its parts, except as herein otherwise provided, applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

J. Trustee accepts these Trusts when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

The right to plead any and all statutes of limitations as a defense to any demand secured by this Deed of Trust is hereby waived.

In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Witness the hand of Trustor, the day and year first above written.

FRANZ J. BORCHARD
FRIEDA W. BORCHARD

State of California,
County of Los Angeles—ss.

On this 10th day of November, 1927, before me, the undersigned, a Notary Public in and for said County, personally appeared Franz J. Borchard and Frieda W. Borchard known to me to be the persons whose names are subscribed to the within

instrument, and acknowledged that they executed the same.

Witness my hand and official seal.

[Notarial Seal] EHRRA B. OLSON,
Notary Public in and for said County and State.
My Commission Expires Nov. 17, 1929. [54]

EXHIBIT C

DEED OF TRUST

With Power of Sale

Franz J. Borchard, et ux, to California Trust Company at Trustee for California Bank, a corporation.

Dated November 30th, 1928.

Order No. 377322A

When Recorded Please Mail to: California Bank, 625 So. Spring St., Los Angeles, California.

Compared: Read by [Illegible]. Document Stein.

Recorded at request of California Title Insurance Co. Jan. 9, 1929 at 8:30 A.M. ~~in Book 8920~~ Page 317 of Official Records, Los Angeles County, Cal.

C. L. LOGAN,
County Recorder.

I certify that I have correctly transcribed this document in above mentioned book.

M. E. COX,
Copyist County Recorder's
Office L. A. County, Cal.

DEED OF TRUST

This Deed of Trust, Made this 30th day of November, 1928, between Franz J. Borchard and Frieda W. Borchard, his wife, herein called Trustor, California Trust Company, a corporation, of Los Angeles, California, herein called Trustee, and California Bank, a corporation, of Los Angeles, California, herein called Beneficiary,

Witnesseth: That Trustor hereby Grants to Trustee, in Trust, with Power of Sale, all that property in the City of Los Angeles, County of Los Angeles, State of California, described as:

> Lots Two Hundred Ten (210), Two Hundred Eleven (211), and Two Hundred Thirty-three (233), of Zelzah, as per map recorded in Book 16, Pages 94 and 95 of Maps, in the office of the County Recorder of said County; Excepting therefrom, the Easterly ten (10) feet of Lot Two Hundred Eleven (211), and the Westerly twenty (20) feet of Lot Two Hundred Thirty-three (233);

including all buildings and improvements thereon or that may be erected thereon; together with all and singular the tenements, hereditaments and ap-

purtenances, water and water rights, pumps and pumping plants, pipes, flumes and ditches thereunto belonging or in anywise appertaining, and all shares of corporate stock evidencing the same, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. [55]

For the Purpose of Securing:

First. Payment of the indebtedness evidenced by One (1) promissory note (and any renewal or extension thereof) substantially in form as follows: $16,000.00 Los Angeles, California, November 30th, 1928. At the times and in the manner hereinafter specified for value received, we, jointly and severally promise to pay to California Bank, a corporation, or order, at its Banking House in the City of Los Angeles, the sum of Sixteen Thousand and no/100 Dollars, with interest on unpaid principal from date hereof until paid, at the rate of Seven (7) per cent. per annum, payable Quarterly. Should the interest not be so paid it shall thereafter bear like interest as the principal. Should default be made in the payment of any installment of principal or interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Should an attorney be employed to procure payment hereof by suit or otherwise, I agree to pay a reasonable sum as attorney's fees therefor. Principal and interest payable in gold coin of the United States of the present standard. This note is secured

by a certain Deed of Trust to California Trust Company, a corporation.

The above principal sum of $16,000.00 will be due and payable as follows: $2000.00 thereof on November 30th, 1929; $2000.00 thereof on November 30th, 1930; and the remaining $12,000.00 thereof on November 30th, 1931.

FRANZ J. BORCHARD
FRIEDA W. BORCHARD

Second. Payment of such additional sums not to exceed $3800.00, with interest thereon, as may be hereafter borrowed from the Beneficiary by the Trustor, when evidenced by another promissory note or notes, certified by the Trustee as being secured hereby; provided, however, that the right to make such additional loans hereunder shall apply solely to the original parties hereto and not to their heirs, devisees, successors or assigns.

Third. Payment and/or performance of every obligation, covenant, promise or agreement herein contained.

To Have and to Hold Said Property Upon the Following Express Trusts, to-wit:

A. Trustor promises and agrees, during continuance of these Trusts:

1. For the purpose of protecting and preserving the security of this Deed of Trust: (a) to properly care for and keep said property in good condition and repair; (b) not to remove or demolish any building thereon; (c) to complete in good and workmanlike manner any building which may be con-

structed thereon, and to pay when due all claims for labor performed and materials furnished therefor; (d) to comply with all laws, ordinances and regulations requiring any alterations or improvements to be made thereon; (e) not to commit or permit any waste or deterioration thereof; (f) not to commit, suffer or permit any act to be done in or upon said property in violation of any law or ordinance; (g) to cultivate, irrigate, fertilize, fumigate, prune and/or do any other act or acts, all in a timely and proper manner, which, from the character or use of said property, may be reasonably necessary to protect and preserve said security, the specific enumerations herein not excluding the general.

2. To provide insurance against loss by fire and earthquake satisfactory to and with loss, if any, payable to the Beneficiary; to deliver the policies of said insurance to the Beneficiary, it being agreed that in the event of a loss the amount collected under any policy of insurance on said property may at the option of the Beneficiary, be credited, first, upon the interest due, if any, upon any sum mentioned as secured hereby; next, upon the principal sums of any advances made hereunder; next, upon the principal sum of the original indebtedness mentioned as secured hereby, and the remainder, if any, upon the principal of any additional loans made hereunder, and interest shall thereupon cease upon any amount so credited upon any of said principal sums; or said amount or any portion thereof may,

at the option of the Beneficiary, either be used in replacing or restoring the improvements partially or totally destroyed to a condition satisfactory to said Beneficiary or be released to the Trustor, in either of which events neither the Trustee nor the Beneficiary shall be obligated to see to the proper application thereof; nor shall the amount so released be deemed a payment on any indebtedness secured hereby.

3. To appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust, the interests of Beneficiary or the rights, powers and duties of Trustee hereunder; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary and/or Trustee may appear. All moneys payable as compensation for the taking of or damage to any portion of the property subject to the lien of this Deed of Trust by reason of any condemnation or eminent domain proceeding shall, at the option of the Trustee and/or Beneficiary, be paid to the Trustee and/or Beneficiary, to be used at its option toward the payment of any indebtedness, taxes, assessments, repairs or other items for the payment of which this Deed of Trust is given as security, whether the same be then due or not, and any amount not so used to be paid by the Trustee and/or Beneficiary to the Trustor.

4. To deliver forthwith to the Beneficiary any and all certificates or other evidence of title which

the Trustor may secure through any proceeding for the registration of the title to said property, or otherwise, to be held by it during the life of this Deed of Trust.

5. To pay before default or delinquency: (a) all taxes, assessments or incumbrances (including any debt secured by Deed of Trust), which appear to be prior liens or charges upon said property or any part thereof, including assessments on appurtenant water stock, and any accrued interest, cost or penalty thereon; (b) all costs, fees and expenses of these Trusts, including cost of evidence of title and Trustee's fees in connection with sale, whether completed or not, which amounts shall become due upon delivery to Trustee of Declaration of Default and Demand for Sale, as hereinafter provided.

6. To pay any and all assessments against said property before any bond or bonds are issued in connection therewith.

7. To pay before delinquency all assessments upon the stock of any Water Company which stock may be used in connection with said property, and all rents, assessments or charges for water appurtenant to or used in connection with said property or for the flumes, ditches, pipes or aqueducts in which such water may be furnished or delivered; and all such stock is hereby expressly made a part of the security hereof.

8. To pay within thirty days after expenditure, without demand, all sums expended by Trustee or Beneficiary under the terms hereof, with interest

from date of expenditure at the rate of ten per cent. per annum.

B. Should Trustor fail or refuse to make any payment or do any act, which he is obligated hereunder to make or do, at the time and in the manner herein provided, then Trustee and/or Beneficiary, each in his sole discretion, may, without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof:

1. Make or do the same in such manner and to such extent as may be deemed necessary to protect the security of this Deed of Trust, either Trustee or Beneficiary being authorized to enter upon and take possession of said property for such purposes.

2. Commence, appear in or defend any action or proceeding affecting or purporting to affect the security of this Deed of Trust, the interests of Beneficiary or the rights, powers and duties of Trustee hereunder, whether brought by or against Trustor, Trustee or Beneficiary; or

3. Pay, purchase, contest or compromise any prior claim, debt, lien, charge or incumbrance which in the judgment of either may affect or appear to affect the security of this Deed of Trust, the interests of Beneficiary or the rights, powers and duties of Trustee hereunder.

Provided, that neither Trustee nor Beneficiary shall be under any obligation to make any of the payments or do any of the acts above mentioned, but, upon election of either or both so to do, em-

ployment of an attorney is authorized and payment of such attorney's fees is hereby secured.

C. Trustee shall be under no obligation to notify any party hereto of any action or proceeding of any kind in which Trustor, Beneficiary, and/or Trustee shall be named as defendant, unless brought by Trustee.

D. Acceptance by Beneficiary of any sum in payment of any indebtedness secured hereby, after the date when the same is due, shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums so secured or to declare default as herein provided for failure so to pay.

E. Trustee may, at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of said property:

1. Reconvey any part of said property;

2. Consent in writing to the making of any map or plat thereof; or

3. Join in granting any easement thereon.

F. Upon payment of all sums secured hereby and surrender to Trustee, for cancellation, of this Deed of Trust and the note secured hereby, Trustee, upon receipt from Beneficiary of a written re-

quest reciting the fact of such payment and surrender, shall reconvey without warranty, the estate then held by Trustee, and the Grantee in such reconveyance may be described in general terms as "the person or persons legally entitled thereto," and Trustee is authorized to retain this Deed of Trust and such note. The recitals in such reconveyance of any matters or facts shall be conclusive proof against all persons of the truthfulness thereof.

G. 1. Should breach or default be made by Trustor in payment of any indebtedness and/or in performance of any obligation, covenant, promise or agreement herein mentioned, then Beneficiary may declare all sums secured hereby immediately due, and in such case, shall execute and deliver to Trustee a written Declaration of Default and Demand for Sale and shall surrender to Trustee this Deed of Trust, the note and receipts or other documents evidencing any expenditure secured hereby. Thereafter there shall be recorded in the office of the recorder of the county or counties wherein said real property or some part thereof is situated, a notice of such breach or default and of election to sell or cause to be sold the herein described property to satisfy the obligation hereof.

2. Beneficiary, from time to time before Trustee's sale, may rescind any such notice of breach or default and of election to cause to be sold said property by executing and delivering to Trustee a writ-

ten notice of such rescission, which notice, when recorded in the office of the Recorder of the aforesaid county or counties, shall also constitute a cancellation of any prior Declaration of Default and Demand for Sale. The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any breach or default, then existing or subsequently occurring, or impair the right of Beneficiary to execute and deliver to Trustee, as above provided, other Declarations of Default and Demand for Sale, and notices of breach or default and of election to cause to be sold said property to satisfy the obligations hereof, nor otherwise affect any provision, covenant or condition of said note and of this Deed of Trust or any of the rights, obligations or remedies of the parties thereunder.

3. After three months shall have elapsed following such recordation of said notice, Trustee, without demand on Trustor, shall sell said property as herein provided, having first given notice of the time and place of such sale in the manner and for a time not less than that required by the laws of the State of California for sales of real property under Deeds of Trust.

4. Trustee may postpone sale of all, or any portion, of said property by public announcement at the time fixed by said notice of sale, and may thereafter postpone said sale from time to time by public announcement at the time fixed by the preceding postponement; and without further notice it may

make such sale at the time to which the same shall be so postponed, provided, however, that the sale or any postponement thereof must be made at the place fixed by the original notice of sale.

5. At the time of sale so fixed, Trustee may sell the property so advertised, or any part thereof, either as a whole or in separate parcels at its sole discretion, at public auction, to the highest bidder for cash in United States gold coin, all payable at time of sale; and after any such sale and due payment made, shall execute and deliver to such purchaser a deed or deeds conveying the property so sold, but without covenant or warranty, express or implied, regarding title, possession or incumbrances, whereupon such purchaser or purchasers shall be let into immediate possession of said property, and all other persons in possession thereof shall be deemed to be tenants at suffrance; and the recitals in such deed or deeds of any matters or facts affecting the regularity or validity of said sale shall be conclusive proof of the truthfulness thereof and such deed or deeds shall be conclusive against all persons as to all matters or facts therein recited. Trustee, Beneficiary, any person on behalf of either, or any other person, may purchase at such sale.

II. Trustee shall apply the proceeds of any such sale to payment of:

1. (a) Expenses of sale; (b) all costs, fees, charges and expenses of Trustee and these Trusts,

including cost of evidence of title and Trustee's fee in connection with sale.

2. All sums expended under the terms hereof, not then repaid, with accrued interest at the rate of ten per cent. per annum.

3. Accrued interest on said note.

4. Unpaid principal of said note; or if more than one, the unpaid principal thereof pro rata and without preference or priority; and

5. The amount due and unpaid on any additional sums, borrowed in accordance with the provisions hereof, together with the interest accrued thereon.

6. The remainder if any to the person or persons legally entitled thereto, upon proof of such right.

I. This Deed of Trust in all its parts, except as herein otherwise provided, applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

J. Trustee accepts these Trusts when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

The right to plead any and all statutes of limitations as a defense to any demand secured by this Deed of Trust is hereby waived.

In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Witness the hand of Trustor, the day and year first above written.

FRANZ J. BORCHARD
FRIEDA W. BORCHARD

State of California,
County of Los Angeles—ss.

On this 4th day of December, 1928, before me, the undersigned, a Notary Public in and for said County, personally appeared Franz J. Borchard and Frieda W. Borchard, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

Witness my hand and official seal.

[Notarial Seal] H. C. PRATT,
Notary Public in and for said County and State.

[56]

EXHIBIT D

DEED OF TRUST WITH POWER OF SALE

Franz J. Borchard et ux to California Trust Company as Trustee for California Bank, a corporation.

Dated June 19th, 1933.

Order No. 889.

When recorded please mail to California Bank, 625 South Spring Street, Van Nuys, Cal.

Compared. Read by Terry. Document McClary. Recorded Jun. 21, 1933, 35 min. past 12 M, in Book 12218, at Page 217 of Official Records, Los Angeles, Co., Cal.

DEED OF TRUST

This Deed of Trust, made this 19th day of June, 1933, between Franz J Borchard and Frieda W. Borchard, his wife (who acquired title to a portion of the hereinafter described property as Franz John Borchard and Frieda Wucherpfennig Borchard, also known as Freda Wuckfinning Borchard, his wife), herein called Trustor, California Trust Company, a corporation, of Los Angeles, California, herein called Trustee, and California Bank, a corporation, of Los Angeles, California, herein called Beneficiary.

Witnesseth: That Trustor hereby grants to Trustee, in trust, with power of sale, all that property in the City of Los Angeles, and County of Los Angeles, State of California, described as:

Parcel 1: Lot Seven Hundred Twenty-seven (727), of Tract Number 1000, as per map recorded in Book 19, Pages 1 to 34 inclusive of Maps, in the office of the County Recorder of said County.

Subject to Trust Deed of Record for $8000.00.

Parcel 2: Lots Two Hundred Ten (210), Two Hundred Eleven (211), and Two Hundred Thirty-three (233), of Zelzah, as per map recorded in Book 16, Pages 94 and 95 of Maps,

in the office of the County Recorder of said County; excepting therefrom, the Easterly 10 feet of Lot 211, and the Westerly 20 feet of Lot 233.

Subject to Trust Deed of Record for $16,000.00.

Parcel 3: The East quarter (E¼) of Lot Eleven (11) and the West half (W½) of Lot Twelve (12), of Section 19, of Subdivision Number One (1), of the Property of the Porter Land and Water Company, as per map recorded in Book 31, Page 3, et. seq., Miscellaneous Records of said County.

Parcel 4: Lots Six Hundred Ninety-eight (698) and Six Hundred Ninety-nine (699) of Tract Number 1000, as per map recorded in Book 19, Pages 1 to 34, inclusive, of Maps, in the office of the County Recorder of said County; excepting from said lots the South 1320 feet thereof.

Parcels 3 and 4, subject to Trust Deed of Record for $50,000.00 (on this and other property)

including all buildings and improvements thereon or that may be erected thereon; together with all and singular the tenements, hereditaments and appurtenances, water and water rights, pumps and pumping plants, pipes, flumes and ditches thereunto belonging or in anywise appertaining, and all shares of corporate stock evidencing the same, and the

reversion and reversions, remainder and remainders, rents, issues and profits thereof. [57]

For the Purpose of Securing:

First. Payment of the indebtedness evidenced by one promissory note (and any renewal or extension thereof) substantially in form as follows:

$3,566.93 Los Angeles, California, June 19th, 1933

On demand after date, for value received, we, jointly and severally, promise to pay to California Bank, a corporation, or order, at its Banking House in the City of Los Angeles, the sum of Three Thousand Five Hundred Sixty-six and 93/100 Dollars, with interest from date hereof until paid, at the rate of seven (7) per cent. per annum, payable on demand. Should the interest not be so paid it shall thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Should an attorney be employed to procure payment hereof by suit or otherwise, I agree to pay a reasonable sum as attorney's fees therefor. Principal and interest payable in gold coin of the United States of the present standard. This note is secured by a certain Deed of Trust to California Trust Company, a corporation.

FRANZ J. BORCHARD

FRIEDA W. BORCHARD

Second. Payment of such additional sums not to exceed $....., with interest thereon, as may be hereafter borrowed from the Beneficiary by the Trustor, when evidenced by another promissory note or notes, certified by the Trustee as being secured hereby; provided, however, that the right to make such additional loans hereunder shall apply solely to the original parties hereto and not to their heirs, devisees, successors or assigns.

Third. Payment and/or performance of every obligation, covenant, promise or agreement herein contained.

To have and to hold said property upon the following express trusts, to-wit:

A. Trustor promises and agrees, during continuance of these Trusts:

1. For the purpose of protecting and preserving the security of this Deed of Trust: (a) to properly care for and keep said property in good condition and repair; (b) not to remove or demolish any building thereon; (c) to complete in good and workmanlike manner any building which may be constructed thereon, and to pay when due all claims for labor performed and materials furnished therefor; (d) to comply with all laws, ordinances and regulations requiring any alterations or improvements to be made thereon; (e) not to commit or permit any waste or deterioration thereof; (f) not to commit, suffer or permit any act to be done in or upon said property in violation of any law or

ordinance; (g) to cultivate, irrigate, fertilize, fumigate, prune and/or do any other act or acts, all in a timely and proper manner, which, from the character or use of said property, may be reasonably necessary to protect and preserve said security, the specific enumerations herein not excluding the general.

2. To provide insurance covering all buildings now situate, or which may be hereafter erected upon said property, against loss by fire and earthquake satisfactory to and with loss, if any, payable to the Beneficiary; to deliver the policies of said insurance to the Beneficiary, it being agreed that in the event of a loss the amount collected under any policy of insurance on said property may, at the option of the Beneficiary, be credited, first, upon the interest due, if any, upon any sum mentioned as secured hereby; next, upon the principal sums of any advances made hereunder; next, upon the principal sum of the original indebtedness mentioned as secured hereby, and the remainder, if any, upon the principal of any additional loans made hereunder, and interest shall thereupon cease upon any amount so credited upon any of said principal sums; or said amount or any portion thereof may, at the option of the Beneficiary, either be used in replacing or restoring the improvements partially or totally destroyed to a condition satisfactory to said Beneficiary or be released to the Trustor, in either of which events neither the Trustee nor the Benefi-

ciary shall be obligated to see to the proper application thereof; nor shall the amount so released be deemed a payment on any indebtedness secured hereby.

3. To appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust, the interest of Beneficiary or the rights, powers and duties of Trustee hereunder; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary and/or Trustee may appear. All moneys payable as compensation for the taking of or damage to any portion of the property subject to the lien of this Deed of Trust by reason of any condemnation or eminent domain proceeding shall, at the option of the Trustee and/or Beneficiary, be paid to the Trustee and/or Beneficiary, to be used at its option toward the payment of any indebtedness, taxes, assessments, repairs or other items for the payment of which this Deed of Trust is given as security, whether the same be then due or not, and any amount not so used to be paid by the Trustee and/or Beneficiary to Trustor.

4. To deliver forthwith to the Beneficiary any and all certificates or other evidence of title which the Trustor may secure through any proceeding for the registration of the title to said property, or otherwise, to be held by it during the life of this Deed of Trust.

5. To pay before default or delinquency: (a) all taxes, assessments or incumbrances (including any debt secured by Deed of Trust), which appear to be prior liens or charges upon said property or any part thereof, including assessments on appurtenant water stock, and any accrued interest, cost or penalty thereon; (b) all costs, fees and expenses of these Trusts, including cost of evidence of title and Trustee's fees in connection with sale, whether completed or not, which amounts shall become due upon delivery to Trustee of Declaration of Default and Demand for Sale, as hereinafter provided.

6. To pay any and all assessments against said property before any bond or bonds are issued in connection therewith.

7. To pay before delinquency all assessments upon the stock of any Water Company which stock may be used in connection with said property, and all rents, assessments or charges for water appurtenant to or used in connection with said property or for the flumes, ditches, pipes or aqueducts in which such water may be furnished or delivered; and all such stock is hereby expressly made a part of the security hereof.

8. To pay immediately without demand after expenditure, all sums expended by Trustee or Beneficiary under the terms hereof, with interest from date of expenditure at the rate of ten per cent. per annum.

B. Should Trustor fail or refuse to make any payment or do any act, which he is obligated hereunder to make or do, at the time and in the manner herein provided, then Trustee and/or Beneficiary, each in his sole discretion, he being hereby made the sole judge of the legality thereof, may, without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof:

1. Make or do the same in such manner and to such extent as may be deemed necessary to protect the security of this Deed of Trust, either Trustee or Beneficiary being authorized to enter upon and take possession of said property for such purposes.

2. Commence, appear in or defend any action or proceeding affecting or purporting to affect the security of this Deed of Trust, the interest of Beneficiary or the rights, powers and duties of Trustee hereunder, whether brought by or against Trustor, Trustee or Beneficiary; or

3. Pay, purchase, contest or compromise any prior claim, debt, lien, charge or incumbrance which in the judgment of either may affect or appear to affect the security of this Deed of Trust, the interest of Beneficiary or the rights, powers and duties of Trustee hereunder.

Provided, that neither Trustee nor Beneficiary shall be under any obligation to make any of the payments or do any of the acts above mentioned, but, upon election of either or both so to do, em-

ployment of an attorney is authorized and payment of such attorney's fees is hereby secured.

C. Trustee shall be under no obligation to notify any party hereto of any action or proceeding of any kind in which Trustor, Beneficiary and/or Trustee shall be named as defendant, unless brought by Trustee.

D. Acceptance by Beneficiary of any sum in payment of any indebtedness secured hereby, after the date when the same is due, shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums so secured or to declare default as herein provided for failure so to pay.

E. Trustee may, at any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of said property:

1. Reconvey any part of said property;

2. Consent in writing to the making of any map or plat thereof; or

3. Join in granting any easement thereon.

F. Upon payment of all sums secured hereby and surrender to Trustee, for cancellation, of this Deed of Trust and the note secured hereby, Trustee, upon receipt from Beneficiary of a written request reciting the fact of such payment and surrender, shall

reconvey, without warranty, the estate then held by Trustee, and the Grantee in such reconveyance may be described in general terms as "the person or persons legally entitled thereto" and Trustee is authorized to retain this Deed of Trust and such note. The recitals in such reconveyance of any matters or facts shall be conclusive proof against all persons of the truthfulness thereof.

G. 1. Should breach or default be made by Trustor in payment of any indebtedness and/or in performance of any obligation, covenant, promise or agreement herein mentioned, then Beneficiary may declare all sums secured hereby immediately due, and in such case, shall execute and deliver to Trustee a written Declaration of Default and Demand for Sale and shall surrender to Trustee this Deed of Trust, the note and receipts or other documents evidencing any expenditure secured hereby. Thereafter there shall be recorded in the office of the recorder of the county or counties wherein said real property or some part thereof is situated, a notice of such breach or default and of election to sell or cause to be sold the herein described property to satisfy the obligation hereof.

2. Beneficiary, from time to time before Trustee's sale, may rescind any such notice of breach or default and of election to cause to be sold said property by executing and delivering to Trustee a written notice of such rescission, which notice, when recorded in the office of the Recorder of the aforesaid county or counties, shall also constitute a can-

cellation of any prior Declaration of Default and Demand for Sale. The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any breach or default, then existing or subsequently occurring, or impair the right of Beneficiary to execute and deliver to Trustee, as above provided, other Declarations of Default and Demand for Sale, and notices of breach or default and of election to cause to be sold said property to satisfy the obligations hereof, nor otherwise affect any provision, covenant or condition of said note and of this Deed of Trust or any of the rights, obligations or remedies of the parties thereunder.

3. After three months shall have elapsed following such recordation of said notice, Trustee, without demand on Trustor, shall sell said property as herein provided, having first given notice of the time and place of such sale in the manner and for a time not less than that required by the laws of the State of California for sales of real property under Deeds of Trust.

4. Trustee may postpone sale of all, or any portion, of said property by public announcement at the time fixed by said notice of sale, and may thereafter postpone said sale from time to time by public announcement at the time fixed by the preceding postponement; and without further notice it may make such sale at the time to which the same shall be so postponed, provided, however, that the sale or any postponement thereof must be made at the place fixed by the original notice of sale.

5. At the time of sale so fixed, Trustee may sell the property so advertised, or any part thereof, either as a whole or in separate parcels at its sole discretion, at public auction, to the highest bidder for cash in United States gold coin, all payable at time of sale, and after any such sale and due payment made, shall execute and deliver to such purchaser a deed or deeds conveying the property so sold, but without covenant or warranty, express or implied, regarding title, possession or incumbrances, whereupon such purchaser or purchasers shall be let into immediate possession of said property, and all other persons in possession thereof shall be deemed to be tenants at suffrance; and the recitals in such deed or deeds of any matters or facts affecting the regularity or validity of said sale shall be conclusive proof of the truthfulness thereof and such deed or deeds shall be conclusive against all persons as to all matters or facts therein recited. Trustee, Beneficiary, any person on behalf of either, or any other person, may purchase at such sale.

II. Trustee shall apply the proceeds of any such sale to payment of:

1. (a) Expenses of sale; (b) all costs, fees, charges and expenses of Trustee and of these Trusts, including cost of evidence of title and Trustee's fee in connection with sale.

2. All sums expended under the terms hereof, not then repaid, with accrued interest at the rate of ten per cent. per annum.

3. Accrued interest on said note.

4. Unpaid principal of said note; or if more than one, the unpaid principal thereof pro rata and without preference or priority; and

5. The amount due and unpaid on any additional sums borrowed in accordance with the provisions hereof, together with the interest accrued thereon.

6. The remainder if any to the person or persons legally entitled thereto, upon proof of such right.

I. This Deed of Trust in all its parts, except as herein otherwise provided, applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

J. Trustee accepts these Trusts when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

The right to plead any and all statutes of limitations as a defense to any demand secured by this Deed of Trust is hereby waived.

In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Witness the hand of Trustor, the day and year first above written.

FRANZ J. BORCHARD

MRS. FRIEDA W. BORCHARD

State of California,
County of Los Angeles—ss.

On this 19th day of June, 1933, before me, the undersigned, a Notary Public in and for said County, personally appeared Franz J. Borchard and Frieda W. Borchard, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

Witness my hand and official seal.

[Notarial Seal] HARRIET W. STIVERSON,
Notary Public in and for said County and State.

[58]

EXHIBIT E

MORTGAGE OF CROPS

This Mortgage, made this 30th day of January, 1934, by Franz J. Borchard and Frieda W. Borchard, his wife, occupation, Farmers, hereinafter designated as the Mortgagors, to California Bank, a corporation, organized and existing under the laws of the State of California, having its principal place of business in the City of Los Angeles, County of Los Angeles, said State, occupation Banking, hereinafter designated as Mortgagee:

Witnesseth:

That the Mortgagors hereby mortgage to the Mortgagee all the crops of sugar beets and all other

crops of every kind and character which crops of sugar beets and other crops are now standing and growing and/or which shall or may hereafter be planted, grown, cultivated, cut, gathered, packed, or harvested during the year 1934 and thereafter during the continuance of this Mortgage on the following described real property situated in the City of Los Angeles, County of Los Angeles, State of California, to-wit:

Lots Two Hundred Ten (210), Two Hundred Eleven (211), and Two Hundred Thirty-three (233) of Zelzah, as per map recorded in Book 16, pages 94 and 95 of Maps, in the office of the County Recorder of said County; excepting therefrom, the Easterly ten (10) feet of Lot Two Hundred Eleven (211), and the Westerly twenty (20) feet of Lot Two Hundred Thirty-three (233).

Lot Seven Hundred Twenty-seven (727) of Tract Number One Thousand (1000), as per map recorded in Book 19, pages 1 to 34, inclusive of Maps, in the Office of the County Recorder of said County.

The East Quarter (E¼) of Lot Eleven (11) and the West Half (W½) of Lot Twelve (12), of Section Nineteen (19), of Subdivision Number One (1), of the Property of the Porter Land and Water Company, as per map recorded in Book 31, page 3, et seq., Miscellaneous Records of said County.

Lots Six Hundred Ninety-eight (698) and Six Hundred Ninety-nine (699) of Tract Number One Thousand (1000), as per map recorded in Book 19, pages 1 to 34, inclusive of Maps, in the office of the County Recorder of said County; excepting from said lots the South 1320 feet thereof. [59]

as security for the payment to said Mortgagee of the indebtedness owing by the Mortgagors to the Mortgagee according to the terms and conditions of the following described promissory notes (and any renewals, extensions, and/or refunding thereof) substantially in form as follows:

"$50,000.00.

Los Angeles, California.
January 24th, 1927.

Three (3) years——after date, for value received, we, jointly and severally promise to pay to California Bank, a corporation, or order, at its Banking House in the City of Los Angeles, the sum of Fifty Thousand and no 100 Dollars, with interest from date until paid at the rate of seven (7) per cent. per annum, payable quarterly.

Should the interest not be so paid it shall thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the

holder of this note. Should an attorney be employed to procure payment hereof by suit or otherwise, I agree to pay a reasonable sum as attorney's fees therefor. Principal and interest payable in gold coin of the United States of the present standard. This note is secured by a certain Deed of Trust to California Trust Company, a corporation..

FRANZ J. BORCHARD,
FRIEDA W. BORCHARD."

"$8,000.00.

Los Angeles, California,
November 8th, 1927.

Three (3) years after date, for value received, we, jointly and severally, promise to pay to California Bank, a corporation, or order, at its Banking House in the City of Los Angeles, the sum of Eight Thousand and no/100 Dollars, with interest from date hereof until paid, at the rate of seven (7) per cent. per annum, payable quarterly.

Should interest not be so paid it shall thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Should an attorney be employed to procure payment hereof by suit or otherwise, I agree to pay a reasonable sum

as attorney's fees therefor. Principal and interest payable in gold coin of the United States of the present standard. This note is secured by a certain Deed of Trust to California Trust Company, a corporation.

FRANZ J. BORCHARD,
FRIEDA W. BORCHARD." [60]

"$10,000.00.

Los Angeles, California,
November 7th, 1927.

On January 24th, 1930, for value received, we, jointly and severally, promise to pay to California Bank, a corporation, or order, at its Banking House in the City of Los Angeles, the sum of Ten Thousand and no/100 Dollars, with interest from date hereof until paid, at the rate of seven (7) per cent. per annum, payable on January 24th, 1928, and quarterly thereafter.

Should the interest not be so paid, it shall become a part of the principal and thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in gold coin of the United States of the present standard. This note is secured by a certain

Deed of Trust to California Trust Company, a corporation.

FRANZ J. BORCHARD,
FRIEDA W. BORCHARD."

"$16,000.00.

Los Angeles, California,
November 30th, 1928.

At the times and in the manner hereinafter specified, for value received, we, jointly and severally, promise to pay to California Bank, a corporation, or order, at its Banking House in the City of Los Angeles, the sum of Sixteen Thousand and no/100 Dollars, with interest on unpaid principal from date hereof until paid, at the rate of seven (7) per cent. per annum, payable quarterly.

Should the interest not be so paid it shall thereafter bear like interest as the principal. Should default be made in the payment of any installment of principal or interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Should an attorney be employed to procure payment hereof by suit or otherwise, I agree to pay a reasonable sum as attorney's fees therefor. Principal and interest payable in gold coin of the United States of the present standard. This note is secured by a certain Deed of Trust to California Trust Company, a corporation.

The above principal sum of $16,000.00 will be due and payable as follows: $2,000.00 thereof on November 30th, 1929; $2,000.00 thereof on November 30th, 1930; and the remaining $12,000.00 thereof on November 30th, 1931.

FRANZ J. BORCHARD,
FRIEDA W. BORCHARD." [61]

"$3,566.93.

Los Angeles, California,
June 19th, 1933.

———On Demand———after date, for value received, we jointly and severally, promise to pay to California Bank, a corporation, or order, at its Banking House in the City of Los Angeles, the sum of Three Thousand Five Hundred Sixty-six and 93/100 Dollars, with interest from date hereof until paid, at the rate of seven (7) per cent. per annum payable on demand.

Should the interest not be so paid it shall thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due; then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Should an attorney be employed to procure payment hereof by suit or otherwise, I agree to pay a reasonable sum as attorney's fees therefor. Principal and interest payable in gold coin of the United States of

the present standard. This note is secured by a certain Deed of Trust to California Trust Company, a corporation.

FRANZ J. BORCHARD,
MRS. FRIEDA W. BORCHARD."

and as security for any and all advances made by the Mortgagee to or for the Mortgagors, including advances made for the protection or preservation of the Mortgagee's security, the mortgaged property, or any part thereof, or for or on account of the real property on which the mortgaged crops may be growing, which right of advancement is hereby given to the said Mortgagee, to be exercised at the Mortgagee's option whenever and wherever the Mortgagee may deem it necessary or proper so to do, and also as security for the payment and performance of each and every of the obligations and promises of the Mortgagors herein contained.

Said Mortgagors agree that they will during the continuance of this Mortgage, keep the mortgaged property in good condition and repair; that they will pay all taxes, charges, and assessments that may be levied upon their property or income, and all taxes and license fees imposed upon them or their right to conduct business; that they will pay immediately [62] without demand after expenditure, all sums expended by the Mortgagee under the terms hereof, with interest from date of expenditure at the rate of ten per cent. (10%) per annum; that they will not remove nor permit to be removed

any part of said property from the premises where the same is located, as herein stated, without the written consent of the mortgagee.

Said Mortgagors hereby promise and agree that they will properly cultivate, irrigate, fertilize, fumigate, prune and/or do any other act or acts, all in a timely and proper manner, which, from the character or use of said property may be reasonably necessary to protect and preserve said security, the specific enumerations herein not excluding the general; that they will attend to, care for, and protect all crops hereby mortgaged now growing and/or hereafter grown and until ready for gathering and harvesting, and then properly gather and harvest and prepare the same for market, and when so prepared, deliver the marketable products immediately to the Mortgagee to be by held and/or disposed of at such times and for such price and on such terms as the said Mortgagee may deem proper; and the proceeds of sale shall be applied to the payment of the debts hereby secured, with the interest thereon, together with any sums paid or charges incurred by the Mortgagee in making such sale, or under any provision hereof, including any advances made by the Mortgagee and interest thereon, in such order and manner as the Mortgagee may elect; and any surplus of said proceeds remaining shall be paid to the Mortgagors.

Said Mortgagors hereby declare and warrant to the Mortgagee that they are the absolute owners and in possession of all of said mortgaged property,

that all of said property is now in the possession of the Mortgagors at the location above described, and that the said property is free and clear of all liens and encumbrances and adverse claims. That said Mortgagors [63] further covenant and agree that they will, upon demand at any time, make, do, execute, and deliver all such further acts, deeds, and things as shall be reasonably required to effectuate the intent hereof so as to render all of said property hereinbefore mentioned, or which may be hereafter acquired, available for the security and satisfaction of said indebtedness, according to the intent and purpose herein expressed, and so as to enable the Mortgagee to sell and/or convey said property or otherwise to subject the same to the lien hereof.

It is hereby agreed that, if said Mortgagors shall fail to make payment of any part of the principal or interest as provided in said promissory note or notes at the times and in the manner therein specified, or if any breach be made of any obligation, promise, declaration or warranty of the Mortgagors herein contained or hereby secured, then the whole principal sum unpaid on said promissory note or notes and of all indebtedness secured hereby, with interest accrued thereon, and all other sums owing by the Mortgagors to the Mortgagee, shall become immediately due and payable at the option of the Mortgagee; and the Mortgagee may at once proceed to foreclose this Mortgage according to law; and/or it may, at its option, and it is hereby em-

powered : to do, enter upon the premises where said mortgaged property may be and take possession thereof, and remove and sell or dispose of the same, and may take all necessary and proper measures for the protection of said crops and property and may take and retain possession thereof, care for, protect, cultivate, irrigate, fumigate, fertilize, gather, harvest, haul, store, pack, sell and/or remove or dispose of the same, and all expenses so incurred and all that may become necessary in the keeping and caring for said crops and property, as well as the hauling, storing and delivery thereof, together with a reasonable charge for the services of the Mortgagee and for any supplies or equipment furnished or used by the Mortgagee, shall be secured by this Mortgage and shall be immediately due and payable from the Mortgagors to the Mortgagee; and out of the proceeds of any sales of the mortgaged property the Mortgagee may retain all costs, expenses, and charges incurred by it in connection therewith, including any [64] reasonable attorney's fees incurred; also all sums due it on said promissory note or notes and all other indebtedness and obligations secured hereby, or under any provisions hereof; and any surplus of such proceeds remaining shall be paid to the Mortgagors. For the purpose aforesaid said Mortgagors do hereby make, constitute and appoint the said Mortgagee, and its successors or assigns, the Mortgagors' true and lawful attorney, irrevocable with full power to enter upon

said premises and take possession of said crops and property and attend to, cultivate, fertilize, fumigate, care for, protect, harvest, gather, sell, and dispose of the same, in the case of any default on the part of the Mortgagor in the payment or performance of any of the Mortgagors' obligations herein contained or in case the Mortgagee is requested so to do by the Mortgagors; and said Mortgagors do further authorize said Mortgagee, its successors or assigns, to take possession of said crops when gathered or harvested, to haul, pack, and store the same, to sell and dispose of the same, or any part thereof, at such time or times and for such sum or sums and on such terms as the Mortgagee may deem proper, and to use the proceeds of such sale or sales as hereinbefore stated.

In addition to the provisions herein elsewhere contained relating to possession, etc., of the trust property by the Mortgagee, the Mortgagee may, but without obligation upon it so to do, take and retain possession of, and/or render or have performed services in attending to, caring for, and/or protecting the mortgaged property, at the request of the Mortgagors. It is expressly agreed and understood that should the Mortgagee at any time take or have possession of the mortgaged property for any of the purposes or reasons hereinbefore mentioned, whether at the request of the Mortgagors or otherwise, and whether or not there is then any existing default on the part of the Mortgagors hereunder, all of the provisions of this Mortgage relating to

advances and expenditures by the [65] Mortgagee in connection with the mortgaged property, the obligation of the Mortgagors to repay the same, the Mortgagee's lien and security therefor, compensation of the Mortgagee, sale of the mortgaged property, disposition of the proceeds thereof, and all other provisions hereof designed for the protection of the Mortgagee and/or the mortgaged property, shall apply to each such situation and shall define and outline the rights and obligations of the parties hereto, unless otherwise agreed in writing by said parties.

The Mortgagors hereby agree to pay the Mortgagee a reasonable sum for any services and/or work rendered or performed or contracted to be performed by the Mortgagee in connection with the mortgaged property and for any materials, supplies, or equipment furnished or used by the Mortgagee in connection therewith, payment of which sums to the Mortgagee is secured hereby.

It is expressly agreed and understood that the Mortgagee may, and it is hereby authorized and empowered to, employ such attorneys, agents, representatives, and or employees as in said Mortgagee's absolute discretion appears necessary and expedient to protect any part or all of the mortgaged property and or the Mortgagee's security.

At any sale or sales of the mortgaged property, the Mortgagee, or any person on behalf of the Mortgagee, or any other person, may purchase the mortgaged property, or any part thereof.

If suit be brought, or any proceeding instituted to foreclose this mortgage, there shall be due from the Mortgagor to the Mortgagee therein, immediately upon the commencement thereof, a reasonable attorney's fee in said action or proceeding, which sum is hereby secured.

It is further agreed and understood that the Mortgagee or its assigns shall have, and they are and each of them is hereby granted, the right and power to institute and/or maintain, without exhausting any security held by them or either of them, and either before, concurrently with, and/or after proceedings are instituted or conducted under the above mentioned provisions of this Mortgage, such action or other proceedings in court or otherwise to recover any indebtedness or obligation due them or [66] either of them from the Mortgagor, whether or not secured hereby or herein mentioned, with the same freedom of action and or choice of remedy as though such indebtedness or obligation were wholly unsecured, provided that nothing herein contained shall affect or impair any of the rights, powers, and or liens of the Mortgagee as hereinabove set out in this Mortgage, such rights, powers and or liens and or the right and power to institute and or maintain suit without first exhausting the security herein mentioned or any other security therefor and/or by instituting and or maintaining any other, different or separate or independent proceeding being entirely optional with the Mortgagee

and/or its assigns and said rights and powers are cumulative remedies and any one or more of said rights, powers or remedies may be enforced or proceeded with at such time, in such manner, and/or in such order as said Mortgagee and/or its assigns may elect, including the right and option to proceed in any one or more or all of said ways or manners at one and the same time, in the absolute and uncontrolled discretion of said Mortgagee and/or assigns.

The right to plead any and all statutes of limitations as a defense to any demand secured by this Mortgage is hereby waived.

In this mortgage, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

In Witness Whereof, the Mortgagors have executed this Mortgage on the day and year first above written.

FRANZ J. BORCHARD
FRIEDA W. BORCHARD

State of California,
County of Los Angeles—ss.

On this 6th day of February, 1934, before me, the undersigned, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared Franz J. Borchard and Frieda W. Borchard, personally known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.

KATHARINE NEUMANN FERGUSON,
Notary Public in and for said County and State.

[67]

State of California,
County of Los Angeles—ss:

Franz J. Borchard, one of the Mortgagors in the foregoing Mortgage named, being first duly sworn, deposes and says: That the aforesaid Mortgage is made in good faith and without any design to hinder, delay, or defraud any creditor or creditors.

FRANZ J. BORCHARD.

Subscribed and sworn to before me this 6th day of February, 1934.

KATHARINE NEUMANN FERGUSON,
Notary Public in and for said County and State.

State of California,
County of Los Angeles—ss:

Frieda W. Borchard, one of the Mortgagors in the foregoing Mortgage named, being first duly sworn, deposes and says: That the aforesaid Mortgage is made in good faith and without any design to hinder, delay, or defraud any creditor or creditors.

FRIEDA W. BORCHARD.

Subscribed in my presence and sworn to before me this 6th day of February, 1934.

KATHARINE NEUMANN FERGUSON,
Notary Public in and for said County and State.

State of California,
County of Los Angeles—ss:

W. E. Chisholm, being sworn, says: that he is a Junior Vice President of California Bank, the corporation, Mortgagee, in the foregoing Mortgage named, that said mortgage is made in good faith and without any design to hinder, delay or defraud creditors, and that he makes this affidavit on behalf of said California Bank.

W. E. CHISHOLM.

Subscribed and sworn to before me this 6th day of February, 1934.

KATHARINE NEUMANN FERGUSON,
Notary Public in and for said County and State.

[68]

EXHIBIT F

STATEMENT OF BORCHARD LOANS
As of October 26, 1938

	Principal	Advancements	Interest	Totals	Grand Totals
LOAN S-633-24					
Secured by:					
Parcel 1: E1/4 Lot 11, W1/2 Lot 12, Sec. 19, Sub. 1 (30 acre orange grove on Plummer Street)					
Parcel 2: Lots 698 and 699, Tr. 1000; ("Home" property, containing 34 acres)					
Unpaid principal of $50,000 Note	$20,000.00				
Unpaid principal of $10,000 Note	10,000.00			$30,000.00	
Interest at 7% from 4-24-33 to 10-26-38			$11,561.67		
Interest on past due interest			2,116.58	13,678.25	
Advancements:					
4-19-36 Bal. 2nd half 1936-37 Taxes		$270.98			
8-31-37 All of 1935-36 Taxes		910.52			
9-17-37 1935-36 personal property taxes		16.55			
Recordings, Stipulations, etc.		18.72		1,216.77	
Interest on advancements to 10-26-38 at 10%			660.99	660.99	$45,556.01

EXHIBIT F (Continued)

	Principal	Advancements	Interest	Totals	Grand Totals
LOAN S-635-8					
Secured by;					
Parcel 3: Lot 727, Tract 1000 (19 acres on Saticoy Street, Reseda)					
Unpaid principal of $8000 Note	8,000.00			8,000.00	
Interest at 7% from 5-8-33 to 10-26-38			3,061.33		
Interest on past due interest			529.35	3,590.68	
Advancements:					
12-5-33 1st installment of 1933-34 Taxes		132.93			
1-2-34 Installment due on improvement bonds		366.26			
4-20-34 2nd installment of 1933-34 Taxes		132.90			
6-28-34 Installment due on improvement bonds		14.49			
7-29-35 Installment due on improvement bonds		177.21			
12-28-35 Installment due on improvement bonds		147.50			
9-15-36 Installment due on improvement bonds		5.04			
12-2-36 1st installment of 1936-37 Taxes		141.43			
12-31-36 Installment due on improvement bonds		142.65			
4-19-37 2nd installment of 1936-37 taxes		141.42			
8-31-37 All 1935-36 taxes		267.77		1,669.60	
Interest on advancements to 10-26-38 at 10%					
	Principal	Advancements	Interest	Totals	Grand Totals
LOAN S-634-30					

Secured by:				
Parcel 4: Lots 210-211-233 of Zelzah (31⅓ Acres at #19086 Roscoe St.)				
Unpaid principal of $16,000 Note	$12,433.36		$12,433.36	
Interest at 7% from 5-20-33 to 10-26-38		$ 5,692.09		
Interest on past due interest		922.91	6,615.00	
Advancements:				
12-5-33 1st installment of 1933-34 Taxes		$161.17		
4-20-34 2nd installment of 1933-34 Taxes		161.12		
12-2-36 1st installment of 1936-37 Taxes		165.70		
2-27-37 Insurance Premium		9.00		
4-20-37 2nd installment of 1936-37 Taxes		165.68		
8-31-37 Balance 1935-36 Taxes		310.39	973.06	
Interest on advancements to 10-26-38 at 10%		245.60	245.60	$20,267.02
LOAN A-636-19				
Secured by all of above properties.				
Unpaid principal of $3566.93 Note	3,485.84		3,485.84	
Interest at 7% to 10-26-38		1,465.10	1,465.10	4,950.94
Foreclosure Costs to date of foreclosure sale estimated at				1,200.00
Attorney's Fees				3,500.00
TOTAL INDEBTEDNESS				$89,246.82

(Verified Nov. 9, 1938)

[Endorsed]: Filed 2:38 P.M. Nov. 10, 1938. R. S. Zimmerman, Clerk. By M. J. Sommer, Deputy Clerk. [71]

[71]

[Title of District Court and Cause.]

AFFIDAVIT IN OPPOSITION TO PETITION FOR LEAVE TO SELL UNDER DEEDS OF TRUST.

State of California,
County of Los Angeles—ss.

Lloyd S. Nix, being first duly sworn, deposes and says: That he is the attorney for the petitioning debtors in the above entitled proceedings; that on or about October 18, 1935, at the time of the first creditors' meeting after reinstatement of proceedings herein, said debtors filed their Petition for Appointment of Appraisers; that shortly thereafter debtors and the creditor California Bank, individually and through their attorneys, had various conferences regarding the administration of proceedings herein and the operation of debtors' farming properties; that various stipulations were entered into regarding the disbursement and use of the proceeds of crops in 1936, 1937 and 1938; that on or about May 20, 1938, said California Bank announced that it would make no further advances to raise crops or otherwise; that thereafter, on June 7, 1938, debtors filed their Application for Appointment of Appraisers; that appraisers have been appointed and have made their reports; and the matter of an order under Sec. 75-s is now pending before the Conciliation Commissioner.

LLOYD S. NIX,
Attorney for Debtors.

Subscribed and sworn to before me this 5th day of December, 1938.

[Seal] LILIAN M. FISH,
Notary Public.

Filed Dec. 5, 1938. R. S. Zimmerman, Clerk. By Murray E. Wire, Deputy Clerk. [73]

[Title of District Court and Cause.]

AFFIDAVIT OF C. S. PICKRELL

State of California,
County of Los Angeles—ss.

C. S. Pickrell, being first duly sworn, deposes and says: That he is a real estate broker, engaged in the business of selling and exchanging real property in the County of Los Angeles, and has been so engaged for approximately fifteen (15) years immediately preceding the execution of this affidavit; that during this period he has been engaged in handling real property in the San Fernando Valley and is familiar with the value of real property in that section of Los Angeles County.

That on or about the 5th day of December, 1938, affiant inspected and examined the following described real property, and has appraised the same at the values set opposite said parcels:

Appr
Val

Parcel 1: The East Quarter (E¼) of Lot Eleven (11) and the West Half (W½) of Lot Twelve (12), of Section Nineteen (19), of Subdivision Number One (1) of the Property of the Porter Land and Water Company as per map recorded in Book 31, Page 3, et seq., Miscellaneous Records of said County $22,50

Parcel 2: Lots Six Hundred Ninety-eight (698) and Six Hundred Ninety-nine (699) of Tract Number One Thousand (1000); as per map recorded in Book 19, Pages 1 to 34, inclusive, of Maps in the office of the County Recorder of said County; Excepting from said lots the South Thirteen Hundred Twenty (1320) Feet thereof $12,65

Parcel 3: Lot Seven Hundred Twenty-seven (727) of Tract Number One Thousand (1000); as per map recorded in Book 19, Pages 1 to 34 inclusive, of Maps, in the office of the County Recorder of said County ..... $ 8,00

Parcel 4: Lots Two Hundred Ten (210), Two Hundred Eleven (211), and Two Hundred Thirty-three (233), of Zelzah, as per map recorded in Book 16, Pages 94 and 95, of Maps, in the office of the County Recorder of said County; Excepting therefrom, the Easterly ten (10) feet of Lot Two Hundred Eleven (211), and the Westerly twenty (20) feet of Lot Two Hundred Thirty-three (233) $11,93

TOTAL $55,08

That the appraisals of affiant are based upon the maximum price at which the real property hereinabove described could be sold upon the current market, whether such sales were made for cash or upon terms; that in forming his opinion as to the value [75] of said real property, affiant personally consulted listings in his office of similar property located in the same vicinity as the above described property in order to ascertain the price at which other owners of real property of similar character in the community were willing to dispose of their holdings.

That it is affiant's best judgment that all of the real property hereinabove described could not be sold for cash or upon terms for any sum in excess of Fifty-five Thousand Eighty-five Dollars ($55,085.00) at the present time; that there would have to be deducted from said appraised value of said property the usual five per cent (5%) brokerage commission, and other expenses of sale in order to determine the net value of said property; that, as a real estate broker, affiant would not accept a listing of said real property at any figures in excess of that placed upon said property by affiant because in the opinion of affiant, any effort to sell said property, or any parcel thereof, at any figure in excess of that at which affiant has appraised the same, would be unproductive of results.

C. S. PICKRELL,

Affiant.

Subscribed and sworn to before me, this 8th day of December, 1938.

[Notarial Seal] MILDRED L. GRAFFER, Notary Public in and for the County of Los Angeles, State of California. My Commission expires March 6, 1941.

[Endorsed]: Filed 9:06 A.M., Dec. 9, 1938. R. S. Zimmerman, Clerk. By M. J. Sommer, Deputy Clerk. [76]

[Title of District Court and Cause.]

AFFIDAVIT OF HARRY R. BEVIS

State of California,
County of Los Angeles—ss.

Harry R. Bevis, being first duly sworn, deposes and says:

That he is a real estate broker, engaged in the business of selling and exchanging real property in the County of Los Angeles, and has been so engaged for approximately seventeen (17) years immediately preceding the execution of this affidavit; that he has been handling real property in the San Fernando Valley during all of said period, and is familiar with the value of real property in that community.

That on or about the 5th day of December, 1938, affiant inspected and examined the following de-

scribed real property, and has appraised the same at the values set opposite said parcels:

		Appraised Value
Parcel 1:	The East Quarter (E¼) of Lot Eleven (11) and the West Half (W½) of Lot Twelve (12), of Section Nineteen (19), of Subdivision Number One (1) of the Property of the Porter Land and Water Company; as per map recorded in Book 31, Page 3, et seq., Miscellaneous Records of said County	$15,736.00
		[78]
Parcel 2:	Lots Six Hundred Ninety-eight (698) and Six Hundred Ninety-nine (699) of Tract Number One Thousand (1000); as per map recorded in Book 19, Pages 1 to 34, inclusive, of Maps in the office of the County Recorder of said County; Excepting from said lots the South Thirteen Hundred Twenty (1320) Feet thereof	$13,816.00
Parcel 3:	Lot Seven Hundred Twenty-seven (727) of Tract Number One Thousand (1000); as per map recorded in Book 19, Pages 1 to 34 inclusive, of Maps, in the office of the County Recorder of said County	$12,000.00
Parcel 4:	Lots Two Hundred Ten (210), Two Hundred Eleven (211), and Two Hundred Thirty-three (233), of Zelzah, as per map recorded in Book 16, Pages 94 and 95, of Maps, in the office of the County Recorder of said County; Excepting therefrom, the Easterly ten (10) feet of Lot Two Hundred Eleven (211), and the Westerly twenty (20) feet of Lot Two Hundred Thirty-three (233)	$27,000.00
	TOTAL	$68,552.00

That affiant's appraisals of the above property were made upon the basis of their fair value at this time as compared with the fair value of other property of similar character located in the same community; that the values placed upon said property by [79] affiant are approximately fifteen per cent (15%) in excess of what the property would bring if offered for sale upon the current market; that in making said appraisals affiant personally consulted his listings of similar property in the community and affiant therefore states that said listings are approximately fifteen per cent (15%) lower for similar property in the same locality in cases where the owners have fixed selling prices upon their properties in order to effect immediate disposal of the same.

HARRY R. BEVIS,

Affiant.

Subscribed and sworn to before me, this 8th day of December, 1938.

[Notarial Seal] MILDRED L. GRAFFER,

Notary Public in and for the County of Los Angeles, State of California.

My commission expires March 6, 1941.

[Endorsed]: Filed 9:06 A.M. Dec. 9, 1938. R. S. Zimmerman, Clerk. By M. J. Sommer, Deputy Clerk. [80]

[Title of District Court and Cause.]

AFFIDAVIT OF B. W. NICHOLS

State of California,
County of Los Angeles—ss.

B. W. Nichols, being first duly sworn, deposes and says:

That he is an employee of California Bank in its Real Estate Loan Department and is engaged in handling properties which are in the process of foreclosure.

That the assessed valuation of the real property securing the Borchard Loans for the fiscal year 1937-1938 was as follows:

[82]

		Assessed Value
Parcel 1:	The East Quarter (E¼) of Lot Eleven (11) and the West Half (W½) of Lot Twelve (12), and Section Nineteen (19), of Sub-division Number One (1) of the Property of the Porter Land and Water Company; as per map recorded in Book 31, Page 3, et seq., Miscellaneous Records of said County	11,140.00
Parcel 2:	Lots Six Hundred Ninety-eight (698) and Six Hundred Ninety-nine (699) of Tract Number One Thousand (1000); as per map recorded in Book 19, Pages 1 to 34, inclusive, of Maps in the office of the County Recorder of said County; Excepting from said lots the South Thirteen Hundred Twenty (1320) Feet thereof	7,990.00

Parcel 3:	Lot Seven Hundred Twenty-seven (727) of Tract Number One Thousand (1000), as per map recorded in Book 19, Pages 1 to 34 inclusive, of Maps, in the office of the County Recorder of said County	4,860.00
Parcel 4:	Lots Two Hundred Ten (210), Two Hundred Eleven (211), and Two Hundred Thirty-three (233), of Zelzah, as per map recorded in Book 16, Pages 94 and 95, of Maps, in the office of the County Recorder of said County; Excepting therefrom, the Easterly ten (10) feet of Lot Two Hundred Eleven (211), and the Westerly twenty (20) feet of Lot Two Hundred Thirty-three (233)	6,410.00
	TOTAL	$30,400.00

That attached hereto, marked Exhibits A, B, C, D, E, F, and by reference made a part hereof, are the tax bills covering the aforesaid real property for the fiscal year 1937-1938.

B. W. NICHOLS,
Affiant.

Subscribed and sworn to before me, this 8th day of December, 1938.

[Notarial Seal] MARY LINTON,
Notary Public in and for the County of Los Angeles, State of California. [83]

[Endorsed]: Filed 9:06 A. M. Dec. 9, 1938. R. S. Zimmerman, Clerk. By M. J. Sommer, Deputy Clerk. [91]

TAX RATES ON EACH $100 VALUATION IN

COUNTY (LIGHT [illegible] & CHARITIES) [illegible]
(OTHER SETTLEMENTS) [illegible] 1.
LOS ANGELES CIT[illegible] [illegible] 1.
LOS ANGELES CIT[illegible] [illegible] 1.70
METROPOLITAN WATE[illegible] [illegible]
L.A. M[illegible] (MP. [illegible] T. # 2 [illegible]
C[illegible] [illegible]

CAL[illegible]
LOS ANGELES [illegible]

OFFICE OF H.L.BYRAM, COUNTY TAX COLLECTOR
HALL OF JUSTICE LOS ANGELES, CALIFORNIA.

This bill when properly stamped becomes a receipt for the payment of taxes levied by Los Angeles County on the property described hereon for the fiscal year from July 1, 1937 to June 30, 1938

AND FOR THE MUNICIPAL TAXES OF
LOS ANGELES CITY

ASSESSED TO OR OWNED BY

FRANZ JOHN BORCHARD S-133-24

Part Parcel

SOLD [illegible] TAXES [illegible]
WHITE [illegible]
FOR [illegible]

REDEEMED

EXAMINE PROPERTY DESCRIPTIONS CAREFULLY BEFORE PAYING THIS BILL.

1937

SECOND INSTALLMENT DUE JANUARY 30, 1938 RECEIPT HERE

PAID
JAN 22 1938
By [illegible] Deputy
H. L. BYRAM, Co Tax Co.
SUBJECT TO COLLECTION OF [illegible]
CHECK, DRAFT OR DRAFT ONLY

DELINQUENT PENALTY OF 5% AND 50 CENTS COSTS ADDED TO EACH [illegible]

DELINQUENT PENALTY OF 5% ADDED IF UNPAID DEC. 2, 1937 AND 5% ADDED IF UNPAID APRIL 30, 1938

Nº 375777

Vol 66

FIRST INSTALLMENT DUE NOVEMBER 1, 1937 RECEIPT HERE

Nº 375777

Vol. 66

LINES

CLERK

CODE

Sub No. 1 of the Property in Porter Land and Water Co.

	1ST INST.	2ND INST.
TAX	92 55	92 52
5% PEN		
COSTS		
TOTAL		

1937-38

EXHIBIT "A"

TOTAL PAYMENT RECEIPTED HERE

1937

[illegible] BY MAIL, PLEASE [illegible] STAMPED [illegible] OF RECEIPT.

POSITIVELY NO STAMPS WILL BE ACCEPTED IN PAYMENT OF TAXES

PRESENT THIS BILL WHEN PAYING BOTH FIRST AND SECOND INSTALLMENTS

PAYMENTS MADE AFTER JUNE 30, 1938 REQUIRE ADDITIONAL PENALTIES OF 1% PER MONTH

DO NOT DETACH

TAX RATES ON EACH $100 VALUATION IN

COUNTY [illegible]

LOS ANGELES [illegible]

LOS ANGELES [illegible]

METRO [illegible]

[illegible]

OFFICE OF H.L. BYRAM, COUNTY TAX COLLECTOR
HALL OF JUSTICE LOS ANGELES, CALIFORNIA

This bill when properly stamped becomes a receipt for the payment of taxes levied by Los Angeles County on the property described hereon for the fiscal year from July 1, 1937 to June 30, 1938

AND FOR THE MUNICIPAL TAXES OF LOS ANGELES CITY

1937

SECOND INSTALLMENT DUE JANUARY 30, 1938 RECEIPT HERE

Nº 375778

Vol 66

FIRST INSTALLMENT DUE NOVEMBER 1, 1937 RECEIPT HERE

Nº 375778

Vol 66

Lines

ASSESSED TO OR OWNED BY

FRANZ JOHN BORCHARD

9330 RESEDA BLVD

RESEDA CAL

PAID
JAN 22 1938
H. L. BYRAM, Co. Tax Collector

EXAMINE PROPERTY DESCRIPTIONS CAREFULLY BEFORE PAYING THIS BILL.

WRITE FOR INFORMATION

REDEEMED

	LOT	BLK	SUB DIV NAME	REAL ESTATE	IMPROVE MENTS	EXEMPTIONS	NET VALUATION AFTER EXEMPTIONS	TOTAL TAX ITEMS
A 4.45 ACS OF NW ¼ OF LOT 12 IN								
	12	IN	13	2N	15	1150	810	1960	110 92
E 4.85 ACS OF NW ¼ OF LOT 12 IN	12	IN	13	2N	15	1150	810	1960	110 92
S W ¼ OF LOT 12 IN	12	IN	13	2N	15	2800	1150	3950	225 56

	FIRST INSTALLMENT		SECOND INSTALLMENT	
	222	70	222	70
6% PEN	17	80	6% PEN	
3% PEN			3% PEN	
COSTS			COSTS	
TOTAL 1ST	240	50	TOTAL 2ND	

TOTAL PAYMENT RECEIPTED HERE

2ND DIST.		
TAX	222	70
6% PEN.		
COSTS		
TOTAL		

1937

1937 - 38

EXHIBIT "B"

IF PAYMENT IS MADE BY MAIL, PLEASE ENCLOSE A SELF-ADDRESSED STAMPED ENVELOPE FOR RETURN OF RECEIPT.

TO INSURE NOTIFICATION OF IMPROVEMENT LIENS, RECORD ADDRESS & LEGAL DESCRIPTION WITH CITY CLERK, ROOM 248, CITY HALL, LOS ANGELES

PRESENT THIS BILL WHEN PAYING BOTH FIRST AND SECOND INSTALLMENTS

PAYMENTS MADE AFTER JUNE 30, 1938 BECOME ADDITIONAL PENALTIES OF 1% PER MONTH.

TAX RATES ON EACH $100 VALUATION IN

COUNTY (INSTITUTIONS & CHARITIES) .73
(OTHER SERVICES) - - - .68 1.41
LOS ANGELES CITY TAX DIST. 1.
LOS ANGELES CITY SCHOOL 1.
METROPOLITAN WATER DIST.
COUNTY WATERWORKS DIST.
COUNTY FLOOD CONTROL DIST.

OFFICE OF H.L.BYRAM, COUNTY TAX COLLECTOR
HALL OF JUSTICE LOS ANGELES, CALIFORNIA

This bill when properly stamped becomes a receipt for the payment of taxes levied by Los Angeles County on the property described hereon for the fiscal year from July 1, 1937 to June 30, 1938

AND FOR THE MUNICIPAL TAXES OF
LOS ANGELES CITY

1937

SECOND INSTALLMENT DUE JANUARY 30, 1938 RECEIPT HERE

Nº 250488

45

Vol

FIRST INSTALLMENT DUE NOVEMBER 1, 1937 RECEIPT HERE

Nº 250488

45

Vol

LINES

ASSESSED TO OR OWNED BY

FRANZ JOHN BORCHARD

8230 RESEDA BLVD

RESEDA CAL

EXAMINE PROPERTY DESCRIPTIONS CAREFULLY BEFORE PAYING THIS BILL.

DELINQUENT PENALTY OF 5% AND 50 CENTS COST TO BE ADDED TO EACH ITEM UNPAID ON OR BEFORE [illegible]

PAID
JAN 22 1938
County
Los Angeles

DELINQUENT PENALTY OF 5% ADDED IF UNPAID ON [illegible] AND ADDED IF UNPAID ON [illegible]

CLERK

CORR

Tract No. 1000 As per Map Recorded in Book [illegible] of Maps

(Ex S 1320 FT)	030		5440	142 01	54	21 70	
(EX S 1320 FT)	033		4630	121 40			
PERSONAL PROPERTY (LESS 100 EA)			840	22 01			

2ND INST

TAX 221 70

1% PEN

COSTS

TOTAL

1937-38

TOTAL PAYMENT RECEIPTED HERE

1937

EXHIBIT "C"

[illegible]
A LEGAL [illegible]
ROOM [illegible]

POSITIVELY NO STAMPS WILL BE ACCEPTED IN PAYMENT OF TAXES PRESENT THIS B[illegible] WHEN PAYING BOTH FIRST AND [illegible]

DO NOT DETACH

TAX RATES ON EACH $100 VALUATION IN

COUNTY INSTITUTIONS & CHA... .73
(OTHER SERVICES) - - - .03 1.11
LOS ANGELES CITY SCHOOL DIST. 4.
LOS ANGELES CITY SCHOOL 1.
METROPOLITAN WATER DIST. .
COUNTY WATER WORKS DIST. .
COUNTY FLOOD (O. CA... ...) ..

A. V. D. / G... (ASSESSED FROM ...)

Trust No. 4900 As per Bk. 75 P. 1-26 of Maps Records of L. A. Co.

OFFICE OF H.L.BYRAM, COUNTY TAX COLLECTOR
HALL OF JUSTICE LOS ANGELES, CALIFORNIA.

This bill when properly stamped becomes a receipt for the payment of taxes levied by Los Angeles County on the property described hereon for the fiscal year from July 1, 1937 to June 30, 1938

AND FOR THE MUNICIPAL TAXES OF
LOS ANGELES CITY

ASSESSED TO OR OWNED BY,

Lot ... Block ... Tract ... 135-6
5 ... 247 ... Land

SOLD FOR TAXES & ... REDEEMED
WRITTEN ...
FOR ...

EXAMINE PROPERTY DESCRIPTIONS CAREFULLY BEFORE PAYING THIS BILL.

LOT	BLK	TRACT	RANGE	REAL ESTATE	IMPROVEMENTS	EXEMPTIONS	NET TAXABLE	TAX ITEMS	FIRST INSTALLMENT	SECOND INSTALLMENT
									22 41	148 21

1937-38

EXHIBIT "D"

TO INSURE NOTIFICATION OF IMPROVEMENT LIENS, RECORD ADDRESS & LEGAL DESCRIPTION WITH CITY CLERK, ROOM 240, CITY HALL, LOS ANGELES.

POSITIVELY NO STAMPS WILL BE ACCEPTED IN PAYMENT OF TAXES

PRESENT THIS BILL WHEN PAYING BOTH FIRST AND SECOND INSTALLMENTS

1937

SECOND INSTALLMENT
DUE JANUARY 20, 1938
RECEIPT HERE

DELINQUENT PENALTY OF 5% AND 50 CENTS COSTS ADDED TO EACH ITEM UNPAID APRIL 20, 1938

TOTAL PAYMENT
RECEIPTED HERE

PAYMENTS MADE AFTER JUNE 30, 1938 REQUIRE ADDITIONAL PENALTIES OF 1% PER MONTH.

Nº 249809

Vol 45

FIRST INSTALLMENT
DUE NOVEMBER ... 1937
RECEIPT HERE

PAID
JAN 22 1938
By ... Deputy
... Co. Tax Collector

DELINQUENT PENALTY OF 5% ADDED TO AMOUNT OF UNPAID DEC. 2, 1937 AND 5% ADDED IF UNPAID APRIL 30, 1938

Nº 249809

Vol 45

LINES

CLERK

COMP.

2ND INST		
TAX	148	70
5% PEN		
COSTS		
TOTAL		

1937

IF PAYMENT IS MADE BY MAIL, PLEASE ENCLOSE A SELF-ADDRESSED STAMPED ENVELOPE FOR RETURN OF RECEIPT.

DO NOT DETACH

RATES ON EACH $100 VALUATION IN
CITY (INSTITUTIONS & CHARITY) .73
(OTHER SERVICES) - - - .68 1.41
LOS ANGELES CITY TAX DIST. # 4 1.57
LOS ANGELES CITY SCHOOL 1.7
METROPOLITAN WATER DIST. .
COUNTY WATERWORKS DIST. # 3 .
COUNTY FLOOD (CO. LA. - IMP.) .1

OFFICE OF H.L. BYRAM, COUNTY TAX COLLECTOR
HALL OF JUSTICE LOS ANGELES, CALIFORNIA.
This bill when properly stamped becomes a receipt for the payment of taxes levied by Los Angeles County on the property described hereon for the fiscal year from July 1, 1937 to June 30, 1938
AND FOR THE MUNICIPAL TAXES OF
LOS ANGELES CITY

1937

ASSESSED TO OR OWNED BY
FRANZ JOHN BORCHARD
8230 RESEDA BLVD
RESEDA CAL

EXAMINE PROPERTY DESCRIPTIONS CAREFULLY BEFORE PAYING THIS BILL.

SECOND INSTALLMENT DUE JANUARY 20, 1938 RECEIPT HERE

Nº 338214
60
Vol
FIRST INSTALLMENT DUE NOVEMBER 1, 1937 RECEIPT HERE

Nº 338214
60
Vol
LINES

PAID
JAN 22 1938
By
H. L. BYRAM, Co. Tax Collector

DELINQUENT PENALTY OF 5% AND 50 CENTS COSTS ADDED TO EACH ITEM UNPAID APRIL 30, 1938

DELINQUENT PENALTY OF 5% ADDED IF UNPAID DEC. 1, 1937 AND 5% ADDED IF UNPAID APRIL 30, 1938

CLERK
CORR.

								FIRST INSTALLMENT	SECOND INSTALLMENT	2ND INST
111-22	EX OF STS	210		1900	50	1950	10 22	10 22		TAX 108 22
111-22	EX OF STS	211		1920	30	1950	10 22			5% PEN
										COSTS
										TOTAL

1937-38

EXHIBIT "A"

TOTAL PAYMENT RECEIPTED HERE

108 22

POSITIVELY NO STAMPS WILL BE ACCEPTED IN PAYMENT OF TAXES

PRESENT THIS BILL WHEN PAYING BOTH FIRST & SECOND INSTALLMENTS

PAYMENTS MADE AFTER JUNE 30, 1938 REQUIRE ADDITIONAL PENALTIES OF PER MONTH

DO NOT DETACH

TAX RATES ON EACH $100 VALUATION IN

(INSTITUTIONS & CHA...)

(OTHER SERVICES) ... 1.11

LOS ANGELES CITY TA... 1.

LOS ANGELES CITY SC... 1.

METROPOLITAN WATE...

COUNTY WATERBOR...

COUNTY FLOOD (J. LA...)

CALL (...)
REN...
LOS ANGELES
B. W. & CHONS

OFFICE OF H.L.BYRAM, COUNTY TAX COLLECTOR
HALL OF JUSTICE LOS ANGELES, CALIFORNIA.

This bill when properly stamped becomes a receipt for the payment of taxes levied by Los Angeles County on the property described hereon for the fiscal year from July 1, 1937 to June 30, 1938.

ARE FOR THE MUNICIPAL TAXES OF
LOS ANGELES CITY

ASSESSED TO OR OWNED BY

FRANZ JOHN BORCHARD

Lot 2 ...

60

1937

EXAMINE PROPERTY DESCRIPTIONS CAREFULLY BEFORE PAYING THIS BILL.

SECOND INSTALLMENT DUE JANUARY 20, 1938 RECEIPT HERE

DELINQUENT PENALTY OF 5% AND 50 CENTS COSTS ADDED TO EACH ITEM UNPAID APRIL 30, 1938

Nº 338226
60
Vol
FIRST INSTALLMENT DUE NOVEMBER 1, 1937. RECEIPT HERE

PAID
JAN 22 1938
B ... Deputy
H. L. BYRAM, County Tax Collector

DELINQUENT PENALTY OF 5% ADDED IF UNPAID DEC. 5, 1937 AND 5% ADDED IF UNPAID APRIL 30, 1938

Nº 338226
60
Vol.
LINES

CLERK
CORR.

	LOT OR SEC.	BLK. DIV. TRACT	PERSONAL PROPERTY CLASS CODE	REAL ESTATE	IMPROVEMENTS	EXEMPTIONS	NET VAL AFTER EXEMPTIONS	TOTAL TAX ITEMS
EX OF ST	233			2320	190		2510	139 28

	FIRST INSTALLMENT	SECOND INSTALLMENT	2nd INST.
TAX	69 64	69 64	69 64
5% PEN	3 57	5% PEN	5% PEN
COSTS		COSTS	COSTS
TOTAL 1ST	1ST	TOTAL 2ND	2ND	TOTAL

1937-38

EXHIBIT "F"

TO INSURE NOTIFICATION OF IMPROVEMENT LIENS, RECORD ADDRESS & LEGAL DESCRIPTION WITH CITY CLERK, ROOM 240, CITY HALL, LOS ANGELES.

TOTAL PAYMENT RECEIPTED HERE

1937

IF PAYMENT IS MADE BY MAIL, PLEASE ENCLOSE A SELF ADDRESSED STAMPED ENVELOPE FOR RETURN OF RECEIPT.

PAYMENTS MADE AFTER JUNE 30, 1938 REQUIRE ADDITIONAL PENALTIES OF ... PER MONTH.

DO NOT DETACH

... BILL IS ACCEPTED IN PAYMENT OF TAXES

PRESENT THIS BILL WHEN PAYING BOTH FIRST AND SECOND INSTALLMENTS

[Title of District Court and Cause.]

COUNTER-AFFIDAVIT OF ALLAN J. WILSON

State of California,
County of Los Angeles—ss.

Allan J. Wilson, being first duly sworn, deposes and says:

That he is the President and Manager of Foothill Orchard Co., a corporation owning and operating citrus groves covering an acreage of some three hundred acres in Los Angeles County, California; that for the past thirty-five years he has been engaged in citrus growing; that for the past twenty-five years he has been engaged with and owned citrus property in the San Fernando Valley; that he is familiar with the value of such property, and that he has known the Borchard grove hereinafter described since the time that it was planted, approximately twenty-five years ago; that it has always been well cared for and is one of the better groves in the district and consists of approximately thirty acres; that, in his opinion, the property is reasonably worth from Twelve Hundred Fifty Dollars ($1250.00) to Fifteen Hundred Dollars ($1500.00) per acre.

The property referred to in this Affidavit is described as follows:

The East Quarter (E¼) of Lot Eleven (11),

 and the West Half (W½) of Lot Twelve

(12), of Section Nineteen (19), of Subdivision Number One (1) of the Property of the Porter Land and Water Company, as per map recorded in Book 31, Page 8, et seq., Miscellaneous Records of said County (containing approximately 30 acres).

ALLAN J. WILSON

Subscribed and sworn to before me this 19th day of December, 1938.

[Notarial Seal] GRACE HIGGINS,
Notary Public in and for said County of Los Angeles, State of California.

[Endorsed]: Filed 9:07 A.M. Dec. 20, 1938. R. S. Zimmerman, Clerk. By M. J. Sommer, Deputy Clerk. [93]

[Title of District Court and Cause.]

COUNTER-AFFIDAVIT OF EDWARD CUNNING

State of California,
County of Los Angeles—ss.

Edward Cunning, being first duly sworn, deposes and says:

That he is a real estate broker, engaged in the business of selling, exchanging and appraising real property in the County of Los Angeles, State of California, and has been engaged in the real estate business for a period of forty years immediately

preceding the execution of this affidavit; that during the period of the last fifteen years he has been engaged in handling real property in the San Fernando Valley and is familiar with the value of real property in that section of Los Angeles County.

That on or about the 15th day of December, 1938, affiant inspected and examined the following described real property, with which he has been familiar for some period of time, and has appraised the same at the values set opposite said parcels:

		Appraised Value
Parcel 1:	The East Quarter (E¼) of Lot Eleven (11), and the West Half (W½) of Lot Twelve (12), of Section Nineteen (19), of Subdivision Number One (1) of the Property of the Porter Land and Water Company, as per map recorded in Book 31, Page 3, et seq., Miscellaneous Records of said County (containing approximately 30 acres)	$42,000.00

[94]

Parcel 2:	Lots Six Hundred Ninety-eight (698) and Six Hundred Ninety-nine (699) of Tract Number One Thousand (1000), as per map recorded in Book 19, Pages 1 to 34, inclusive, of Maps in the office of the County Recorder of said County; Excepting from said lots the South Thirteen Hundred Twenty (1320) feet thereof; (approximately 31.51 acres)	$20,481.00
Parcel 3:	Lot Seven Hundred Twenty-seven (727) of Tract Number One Thousand (1000); as per map recorded in Book 19, Pages 1 to 34 inclusive, of Maps, in the office of the County recorder of said County, (approximately 19.10 acres)	$10,450.00

Parcel 4: Lots Two Hundred Ten (210), Two Hundred Eleven (211), and Two Hundred Thirty-three (233), of Zelzah, as per map recorded in Book 16, Pages 94 and 95, of Maps, in the office of the County Recorder of said County, Excepting therefrom, the Easterly ten (10) feet of Lot Two Hundred Eleven (211), and the Westerly twenty (20) feet of Lot Two Hundred Thirty-three (233); (containing approximately 32 acres) $17,600.00

TOTAL $90,531.00

[95]

That affiant's appraisals of the above property are made upon the basis of their fair value at this time as compared with the fair value of other property of similar character located in the same vicinity; that in making said appraisals affiant personally consulted his listings and other listings of similar property in the community.

EDWARD CUNNING

Subscribed and sworn to before me this 16th day of December, 1938.

[Notarial Seal] LILIAN M. FISH,
Notary Public in and for said County of Los Angeles, State of California.

[Endorsed]: Filed 9:07 A.M. Dec. 20, 1938. R. S. Zimmerman, Clerk. By M. J. Sommer, Deputy Clerk. [96]

[Title of District Court and Cause.]

COUNTER-AFFIDAVIT OF JOHN S. McCRORY

State of California,
County of Los Angeles—ss.

John S. McCrory, being first duly sworn, deposes and says:

That he is a real estate broker, engaged in the business of selling, exchanging and appraising real property in the County of Los Angeles, State of California, and has been engaged in the real estate business for a period of 16 years immediately preceding the execution of this affidavit; that during the period of the last 16 years he has been engaged in handling real property in the San Fernando Valley and is familiar with the value of real property in that section of Los Angeles County.

That on or about the 14 day of Dec., 1938, affiant inspected and examined the following described real property, with which he has been familiar for some period of time, and has appraised the same at the values set opposite said parcels:

		Appraised Value
Parcel 1:	The East Quarter (E¼) of Lot Eleven (11), and the West Half (W½) of Lot Twelve (12), of Section Nineteen (19), of Subdivision Number One (1) of the Property of the Porter Land and Water Company, as per map recorded in Book 31, Page 3, et seq., Miscellaneous Records of said County (containing approximately 30 acres)	$42,000.00

[97]

Parcel 2:	Lots Six Hundred Ninety-eight (698) and Six Hundred Ninety-nine (699) of Tract Number One Thousand (1000), as per map recorded in Book 19, Pages 1 to 34, inclusive, of Maps in the office of the County Recorder of said County; Excepting from said lots the South Thirteen Hundred Twenty (1320) feet thereof; (approximately 31.51 acres) (Including value of buildings)	$21,050.00
Parcel 3:	Lot Seven Hundred Twenty-seven (727) of Tract Number One Thousand (1000), as per map recorded in Book 19, Pages 1 to 34 inclusive, of Maps, in the office of the County Recorder of said County, (approximately 19.10 acres)	$11,460.00
Parcel 4:	Lots Two Hundred Ten (210), Two Hundred Eleven (211), and Two Hundred Thirty-three (233), of Zelzah, as per map recorded in Book 16, Pages 94 and 95, of Maps, in the office of the County Recorder of said County, Excepting therefrom, the Easterly ten (10) feet of Lot Two Hundred Eleven (211), and the Westerly twenty (20) feet of Lot Two Hundred Thirty-three (233); (containing approximately 32 acres) (Including Value of buildings)	$19,200.00
	TOTAL	$93,710.00

[98]

That affiant's appraisals of the above property are made upon the basis of their fair value at this time as compared with the fair value of other property of similar character located in the same vicinity; that in making said appraisals affiant personally consulted his listings and other listings of similar property in the community.

JOHN S. McCRORY

Subscribed and sworn to before me this 19th day of December, 1938.

[Seal] M. L. ULLESVANG,
Notary Public in and for said County of Los Angeles, State of California.

My commission expires Feb. 15th, 1940.

[Endorsed]: Filed 9:07 A.M. Dec. 20, 1938. R. S. Zimmerman, Clerk. By M. J. Sommer, Deputy Clerk. [99]

[Title of District Court and Cause.]

ORDER

It appearing to the Court that there is now pending before the Conciliation Commissioner a proceeding to determine whether a Stay Order should be issued in the within cause, and it further appearing to the Court that no such Order should be made at this time or until this Court has first determined whether the Petition of California Bank for Leave to Sell Under Certain Deeds of Trust should be granted or denied;

Now, Therefore, It Is Ordered, that until the further Order of this Court the Conciliation Commissioner shall make no Order staying or purporting to stay proceedings against the debtors or any of their property pursuant to Section 75, Sub-division (s), Sub-section (2) of the Bankruptcy Act.

It Is Further Ordered that the making of this Order shall be without prejudice to such further proceedings as may be proper before the Conciliation Commissioner upon determination by this [100] Court of the matter hereinabove mentioned now under advisement.

Dated: December 7, 1938.

WM. P. JAMES,
Judge of the United States
District Court.

Approved as to Form as Provided by Rule 44, this 6 day of December, 1938.

LLOYD S. NIX
By LLOYD S. NIX,
Attorney for Franz J. Borchard
and Frieda W. Borchard.

[Endorsed]: Filed 9:10 A.M. Dec. 7, 1938. R. S. Zimmerman, Clerk. By M. J. Sommer, Deputy Clerk. [101]

[Title of District Court and Cause.]

MEMO. OF DECISION AND ORDER GRANTING PETITION TO SELL

The debtors above named first brought their proceedings under Section 75 of the Bankruptcy Act in November, 1934. The principal property owned by them consists of several parcels of farm or fruit land, against which the California Bank, a banking corporation, held mortgages or trust deeds as security for loans. The original proceedings were terminated by reason of the decision of the Supreme Court touching the validity of the Act, but were reinstated after amendatory act was passed. In May of 1936 the bank presented a motion to dismiss the pending proceedings, which motion the court denied, without prejudice, after hearing. On November 10, 1938, the bank filed its petition asking that it be allowed to foreclose its lien or sell under trust deed. That motion was argued and submitted to the court for decision.

It appears that the indebtedness of the debtors to the bank has constantly increased in amount since 1934. In October of that year the total was $65,735.27. At the time the last motion noted was filed the indebtedness had grown to the amount of $89,246.82. The claim of the bank [103] is that it is threatened with loss and that the property is insufficient in value to satisfy the amount of the debt owing to it. On the other hand, the debtors claim that their property is worth approximately $90,000.00. They submitted several affidavits of indi-

viduals who supported their contention with regard to the value. It appears that appraisers appointed by the conciliation commissioner appraise the total value of the property at $87,300.00. In addition to this, the bank submitted affidavits of two real estate brokers who fix the value at $55,085.00 and at $68,552.00, respectively. An employee of the bank makes affidavit that the assessed value of the property for tax purposes for the fiscal year 1937-1938 is a total of $30,400.00. It is a quite a common understanding that assessors appraise real property at about 50% of its actual value. The highest appraisement figure given by the real estate brokers would seem to represent approximately the correct market value.

The proof offered, in my opinion, fully sustains the assertion of the bank that it will not be able to secure by foreclosure or any other appropriate means satisfaction of its debt, which as before noted, is constantly increasing. The debtors have had several years within which to arrange an adjustment of their obligations, which they have been unable to do. In that condition of affairs, it is fair and equitable to allow the bank to take proceedings which will save it from further loss.

The petion of the bank for leave to foreclose or sell under its trust deeds or mortgages in the manner provided by law is granted. An exception is noted in favor of the debtors.

Dated March 20, 1939.

WM. P. JAMES,

U. S. District Judge.

[Endorsed]: Filed 11:30 A.M., Mar. 20, 1939. R. S. Zimmerman, Clerk. By Murray E. Wire, Deputy Clerk. [104]

In the United States District Court, Southern District of California, Central Division.

No. 24,442-J

In the Matter of

FRANZ J. BORCHARD,

Debtor.

No. 24,441-J

In the Matter of

FRIEDA W. BORCHARD,

Debtor.

ORDER AUTHORIZING AND PERMITTING SALE UNDER DEEDS OF TRUST

The Petition of California Bank, a banking corporation, For Leave to Sell Under Deeds of Trust having come on regularly for hearing on the 5th day of December, 1938, in the above entitled Court, the Hon. Wm. P. James, Judge Presiding, Messrs. Swanwick, Donnelly & Proudfit by Tom W. Henderson appearing for Petitioner, California Bank, and Lloyd S. Nix, Esq., appearing for the respond-

ents Franz J. Borchard and Frieda W. Borchard debtors herein; and the matter having been argued by counsel and submitted for decision; and it appearing to the Court that all of the allegations contained in the Petition of California Bank are true; and the Court being fully advised in the premises;

Now, therefore, it is ordered, adjudged and decreed that California Bank, a banking corporation, be and it is hereby authorized and permitted to proceed to foreclose or sell under its Trust Deeds in the manner provided by law the following described real property, situated in the City of Los Angeles, County of Los Angeles, State of California: [105]

Parcel 1: Lot Seven Hundred Twenty-seven (727), of Tract Number 1000, as per map recorded in Book 19, Pages 1 to 34 inclusive of Maps, in the office of the County Recorder of said County.

Parcel 2: Lots Two Hundred Ten (210), Two Hundred Eleven (211), and Two Hundred Thirty-three (233), of Zelzah, as per map recorded in Book 16, Pages 94 and 95 of Maps, in the office of the County Recorder of said County; excepting therefrom, the Easterly 10 feet of Lot 211, and the Westerly 20 feet of Lot 233.

Parcel 3: The East quarter (E¼) of Lot Eleven (11) and the West half (W½) of Lot Twelve (12), of Section 19, of Subdivision Number One (1), of the Property of the Porter

Land and Water Company, as per map recorded in Book 31, Page 3, et seq., Miscellaneous Records of said County.

Parcel 4: Lots Six Hundred Ninety-eight (698) and Six Hundred Ninety-nine (699) of Tract Number 1000, as per map recorded in Book 19, Pages 1 to 34, inclusive, of Maps, in the office of the County Recorder of said County; excepting from said lots the South 1320 feet thereof.

It is further ordered that all Restraining or Stay Orders heretofore made herein are hereby dissolved so as to permit the foreclosure or sale of the real property hereinabove described.

Dated: March 25, 1939.

WM. P. JAMES,
United States District Judge.

Approved as to Form as provided by Rule 44, this 24th day of March, 1939.

LLOYD S. NIX,
By LILIAN M. FISH,
Attorney for Franz J. Borchard and Frieda W. Borchard.

[Endorsed]: Filed 10:30 A.M., Mar. 25, 1939. R. S. Zimmerman, Clerk. By M. J. Sommer, Deputy Clerk. [106]

[Title of District Court and Cause.]

NOTICE OF MAKING AND FILING ORDER

To Franz J. Borchard and Frieda W. Borchard and Lloyd S. Nix, Esq., their attorney:

You, and Each of You, Will Please Take Notice that on Saturday, the 25th day of March, 1939, the above entitled Court made and filed its Order Authorizing and Permitting the sale of certain real property under Deeds of Trust held by California Bank.

Dated: This 27th day of March, 1939.

SWANWICK, DONNELLY & PROUDFIT

By TOM W. HENDERSON,

Attorneys for California Bank.

[Endorsed]: Filed 3:20 P.M. Mar. 27, 1939. R. S. Zimmerman, Clerk. By M. J. Sommer, Deputy Clerk. [108]

[Title of District Court and Cause.]

PETITION FOR APPEAL AND ORDER ALLOWING THE SAME

Franz J. Borchard and Frieda W. Borchard, petioning debtors, feeling themselves aggrieved by the Order of the above entitled Court, made and entered in the above entitled consolidated proceedings on the 25th day of March, 1939, authorizing and permitting California Bank, a banking corporation, to

proceed to foreclosure or sell under its trust deeds certain real property in the City of Los Angeles, County of Los Angeles, State of California, and dissolving all restraining or stay orders theretofore made so as to permit the foreclosure or sale of said real property,

Hereby Petition for an appeal from said order to the United States Circuit Court of Appeals for the Ninth Circuit, upon the grounds specified in the assignment of errors filed herewith, and pray that their appeal be allowed and a citation issued, directed to California Bank, a banking corporation, and California Trust Company, a corporation, commanding them to appear before the said United States Circuit Court of Appeals for the Ninth Circuit, to do and receive what may appertain to justice in the premises, and that a transcript of the record, [110] proceedings and evidence in said matter, duly authenticated, may be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and for such other and further order or relief as may be meet in the premises.

Dated, this 14th day of April, 1939.

FRANK J. BORCHARD,
FRIEDA W. BORCHARD,
Petitioning Debtors.
By LLOYD S. NIX,
Their Attorney.

The foregoing appeal is hereby allowed, and

It Is Ordered that a bond for costs on appeal be posted in the sum of Two Hundred Fifty Dollars ($250.00), and that Citation upon said appeal issue herein.

Dated, at Los Angeles, in said District, on this 14 day of April, 1939.

WM. P JAMES,
United States District Judge.

[Endorsed]: Filed Apr. 14, 1939, 2:28 P.M. R. S. Zimmerman, Clerk By M. J. Sommers, Deputy Clerk. [111]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Come now Franz J. Borchard and Frieda W. Borchard, debtors, and in support of their petition for appeal from an order of a Judge of the District Court of the United States for the Southern District of California, Central Division, made and entered in proceedings under Section 75 (s) of the Bankruptcy Act on the 25th day of March, 1939, authorizing and permitting California Bank, a banking corporation, to proceed to foreclose or sell under its trust deeds certain real property in the City of Los Angeles, County of Los Angeles, State of California, and dissolving all restraining or stay orders theretofore made so as to permit the foreclosure or sale of said real property, assign the fol-

lowing as errors, which said errors render erroneous the said order, and upon which they rely for a reversal thereof, to-wit:

I.

That the court erred in granting the petition of creditor, California Bank, for authority to proceed to foreclosure or sell under its trust deeds certain real property, situated in the City of Los Angeles, County of Los Angeles, State of California, described as follows: [113]

Parcel 1: Lot Seven Hundred Twenty-seven (727) of Tract Number 1000, as per map recorded in Book 19, Pages 1 to 34 inclusive of Maps, in the office of the County Recorder of said County.

Parcel 2: Lots Two Hundred Ten (210), Two Hundred Eleven (211), and Two Hundred Thirty-three (233), of Zelzah, as per map recorded in Book 16, Pages 94 and 95 of Maps, in the office of the County Recorder of said County; excepting therefrom, the Easterly 10 feet of Lot 211, and the Westerly 20 feet of Lot 233.

Parcel 3: The East quarter (E¼) of Lot Eleven (11) and the West half (W½) of Lot Twelve (12), of Section 19, of Subdivision Number One (1), of the Property of the Porter Land and Water Company, as per map recorded in Book 31, Page 3, et seq. Miscellaneous Records of said County.

Parcel 4: Lots Six Hundred Ninety-eight (698) and Six Hundred Ninety-nine (699) of Tract Number 1000, as per map recorded in Book 19, Pages 1 to 34, inclusive, of Maps, in the office of the County Recorder of said County; Excepting from said lots the South 1320 feet thereof.

during the pendency of proceedings before the Conciliation Commissioner under Section 75 (s) of the Bankruptcy Act, as amended, upon debtors' petition that their property be appraised, and that they be allowed to remain in possession thereof under the supervision and control of the court, and in staying the making of any [114] order staying or purporting to stay proceedings against the debtors or any of their property pursuant to Section 75, Subsection (s), subdivision (2) of the Bankruptcy Act, pending determination upon said petition to sell.

II.

Appraisal of the debtors' property at $87,300.00 having been made pursuant to the provisions of Section 75 (s) of the Bankruptcy Act, as amended, and no objection or exception having been taken thereto, such appraisal was binding upon the court in these proceedings, and the court erred in determining the market value thereof to be approximately $68,552.00.

III.

That the court erred in granting the petition of creditor, California Bank, for leave to foreclose or sell under deeds of trust, in that such ruling is not supported by the evidence.

IV.

That the court erred in granting the petition of creditor, California Bank, for leave to sell under deeds of trust, in that said deeds of trust covered different parcels of real property and secured payment of notes in varying amounts and the court did not determine whether there was any equity in the several parcels of property, but treated the matter as one indebtedness.

V.

That the court erred in dissolving the order restraining California Bank, a corporation, and California Trust Company, a corporation, from selling or causing to be sold, or proceeding with or conducting a sale of real property or foreclosing upon the same, while there was pending before the Conciliation Commissioner a proceeding to determine whether a stay order should issue pursuant to Section 75, subsection (s), subdivision (2) of the Bankruptcy Act. [115]

In order that the foregoing assignment of errors may be and appear of record, said petitioning debtors present the same to the court and pray that such disposition be made thereof as is in accord-

ance with law and the Statutes o the United States in such case made and provi ed, and petitioning debtors pray that said order made and entered on March 25, 1939, be reversed and that an order be entered and proceedings had in accordance with the rights of petitioning debtors.

Dated, this 14th day of April, 1939.

LLOYD S. NIX,

Attorney for Debtors.

[Endorsed]: Filed 2:28 P.M., Apr. 14, 1939. R. S. Zimmerman, Clerk, by M. J. Sommer. [116]

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men by These Presents:

That the undersigned, Maryland Casualty Company, a corporation, duly organized and existing under and by virtue of the laws of the State of Maryland and duly licensed to transact its business in the State of California, and doing business in the County of Los Angeles, State of California, as surety, is held and firmly bound unto California Bank, a banking corporation, and California Trust Company, a corporation, appellees in the above entitled matter, in the full and just sum of Two Hundred Fifty and no/100 ($250.00) Dollars, to be paid to the said California Bank, a banking corporation, and California Trust Company, a corporation, to which payment, well and truly to be made,

the undersigned binds itself, its successors and assigns, firmly by these presents,

Signed and dated this 14th day of April, 1939.

[118]

The Condition of This Obligation Is: Franz J. Borchard and Frieda W. Borchard as appellants have prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from an order of the District Court of the United States for the Southern District of California, Central Division, made and entered on the 25th day of March, 1939, in consolidated proceedings under Section 75-s of the Bankruptcy Act, as amended, pending in that court, wherein said Franz J. Borchard and Frieda W. Borchard were the petitioning debtors, and said California Bank, a banking corporation, appellee, was a creditor, and said California Trust Company, a corporation, was the trustee named in certain deeds of trust wherein said California Bank was named as beneficiary, both of said appellees having been respondents in restraining orders dissolved by said order of March 25th, 1939.

Now, Therefore, if the above named debtors and appellants Franz J. Borchard and Frieda W. Borchard shall prosecute said appeal with effect and pay all costs which may be awarded against them as such appellants if the appeal is not sustained, then

this obligation shall be void, otherwise the same shall be and remain in full force and effect.

MARYLAND CASUALTY
COMPANY,
By RICHARD S. JOHNSTON,
Attorney-in-fact.

State of California,
County of Los Angeles, ss.

On this 14th day of April in the year one thousand nine hundred and thirty-eight, before me Frances B. Gray a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Richard S. Johnston, known to me to be the duly authorized Attorney-in-Fact of Maryland Casualty Company, and the same person whose name is subscribed to the within instrument as the Attorney-in-Fact of said Corporation, and the said Richard S. Johnston acknowledged to me that he subscribed the name of the Maryland Casualty Company as Surety, and his own name as Attorney-in-Fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

FRANCES B. GRAY,
Notary Public in and for said County and State.

My Commission expires January 6, 1942. [119]

Examined and recommended for approval; as provided in Rule 28.

LLOYD S. NIX,
Attorney for Appellants.

[Endorsed]: Filed 4:35 P. M. Apr. 14, 1939. R. S. Zimmerman, Clerk, by M. J. Sommer, Deputy Clerk. [120]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANTS INTEND TO RELY O APPEAL.

This appeal arises in consolidated proceedings under Section 75-s of the Bankruptcy Act, as amended, and is taken by the debtors from an order of a District Judge made on the 25th day of March, 1939, authorizing and permitting California Bank, a banking corporation, to proceed to foreclose or sell under its trust deeds certain real property in Los Angeles County, California, and dissolving all restraining or stay orders theretofore made so as to permit the foreclosure or sale of said real property.

On September 20, 1935, proceedings under said Section 75-s, wherein appellants were the petitioning debtors, were ordered reinstated and the appellees herein, California Bank, a corporation, and California Trust Company, a corporation, were enjoined and restrained until further order of the

court from selling or causing to be sold, or proceeding with or conducting a sale of debtors' real property in Los Angeles County, California, consisting of a thirty-acre orange grove and approximately eighty-seven acres of general farming land. On September 24, 1935, an order was made adjudicating said debtors bankrupt under said Section 75 (s). On October 18, 1935, the date of the first meeting with creditors, [121] said debtors filed with the Conciliation Commissioner their petition that appraisers be appointed and their property set aside to them under the provisions of said Section 75 (s). Thereafter various stipulations were entered into by the debtors and said Bank as to the administration of proceedings, the operation of said farming property, and the disbursement and use of proceeds of crops in 1936, 1937 and 1938. On or about May 20, 1938, said California Bank announced that it would not agree to the use of crop proceeds for the raising of crops or otherwise. On June 7, 1938, on application of the debtors, appraisers were appointed by the Conciliation Commissioner and their report was filed on June 22, 1938. Hearing thereon and for the purpose of fixing rental was set by the Conciliation Commissioner for July 26, 1938, and said appraisal was approved.

On November 9, 1938, said creditor California Bank filed its petition for leave to sell all of said real property under deeds of trust and order to

show cause issued thereon. Said matter was heard on December 5, 1938, and submitted to the court for decision. On said date, the court made an order that the Conciliation Commissioner make no order staying or purporting to stay proceedings against the debtors or any of their property pursuant to Section 75 (s) (2) of the Bankruptcy Act, pending determination upon said petition to sell. On March 25, 1939, the court made its order authorizing and permitting said California Bank to proceed to foreclose or sell said property.

On their appeal from said order, appellant-debtors intend to rely upon the following points, as set forth in their petition for appeal and assignment of errors herein, which are hereby referred to, said points being as follows, to wit:

I.

That the court erred in granting the petition of creditor, California Bank, for authority to proceed to foreclose or sell [122] under its trust deeds debtors' said real property, during the pendency of proceedings before the Conciliation Commissioner under Section 75 (s) of the Bankruptcy Act, as amended, upon debtors' petition that their property be appraised, and that they be allowed to remain in possession thereof under the supervision and control of the court, and in staying the making of any order staying or purporting to stay proceedings against the debtors or any of their property pur-

suant to Section 75, Subsection (s), subdivision (2) of the Bankruptcy Act, pending determination upon said petition to sell.

II.

Appraisal of the debtors' property at $87,300.00 having been made pursuant to the provisions of Section 75 (s) of the Bankruptcy Act, as amended, and no objection or exception having been taken thereto, such appraisal was binding upon the court in these proceedings, and the court erred in determining the market value thereof to be approximately $68,552.00.

III.

That the court erred in granting the petition of creditor, California Bank, for leave to foreclose or sell under deeds of trust, in that such ruling is not supported by the evidence.

IV.

That the court erred in granting the petition of creditor, California Bank, for leave to sell under deeds of trust, in that said deeds of trust covered different parcels of real property and secured payment of notes in varying amounts and the court did not determine whether there was any equity in the several parcels of property, but treated the matter as one indebtedness.

V.

That the court erred in dissolving the order restraining California Bank, a corporation, and California Trust Company, a corporation, from selling or causing to be sold, or proceeding with [123] or conducting a sale of real property or foreclosing upon the same, while there was pending before the Conciliation Commissioner a proceeding to determine whether a stay order should issue pursuant to Section 75, subsection (s), subdivision (2) of the Bankruptcy Act.

Dated, this 18th day of April, 1939.

Respectfully submitted,

LLOYD S. NIX,

Attorney for Appellants.

[Endorsed]: Filed 4:48 P.M., May 22, 1939. R. S. Zimmerman, Clerk, by M. J. Sommer, Deputy Clerk. [124]

[Title of District Court and Cause.]

STIPULATION AND DESIGNATION OF CONTENTS OF RECORD ON APPEAL

It Is Hereby Stipulated and Agreed that in the above entitled consolidated proceedings the portions of the record, proceedings, and evidence to be included in the record on appeal taken by the debtors therein from the order made on the 25th day of March, 1939, are as follows:

1. Order for Reinstatement and Restraining Order in the Matter of Franz J. Borchard, debtor, together with the following bracket:

(Order for Reinstatement and Restraining Order in the Matter of Frieda W. Borchard, debtor, in like form was also made and entered on Sept. 20, 1935.)

2. Order for Adjudication under Section 75-s of the Bankruptcy Act in the Matter of Franz J. Borchard, debtor, together with the following bracket:

(Order for Adjudication under said Section 75-s was also made and entered on Sept 24, 1935, in the Matter of Frieda W. Borchard, debtor.)

3. Petition for Appointment of Appraisers, etc., in the Matter of Franz J. Borchard, debtor, [125] filed Oct. 18, 1935, with the Conciliation Commissioner, together with the following bracket:

(Petition for appointment of appraisers, etc., in like form was also filed on Oct. 18, 1935, in the Matter of Frieda W. Borchard, debtor, and in the consolidated proceedings on June 7, 1938.)

4. Memorandum Opinion and Order of Dec. 12, 1935, re crop mortgage

5. Memorandum Opinion and Order of May 15, 1936, re motion to dismiss.

6. Nunc pro tunc order of June 8, 1936, amending order of May 15, 1936.

7. Stipulation and Order of May 27, 1936.

8. Stipulation and Order of June 10, 1937.

9. Stipulation and Order of Dec. 20, 1937.

10. Stipulation and Order of March 7, 1938.

10-A. Petition for Appointment of Appraisers filed May 24, 1938.

11. Appraisal filed June 22, 1938, with Conciliation Commissioner.

12. Petition of California Bank for Leave to Sell under Deeds of Trust, together with exhibits attached thereto.

13. Affidavit of Lloyd S. Nix in opposition to Petition for leave to sell under deeds of trust.

14. Affidavit of C. S. Pickrell.

15. Affidavit of Harry R. Bevis.

16. Affidavit of B. W. Nichols, together with exhibits attached.

17. Counter-affidavit of Allan J. Wilson.

18 Counter-affidavit of Edward Cumming.

19. Counter-affidavit of John S. McCrory.

[126]

20. Order, dated December 7, 1938.

21. Memorandum of decision and order, dated March 20, 1939.

22. Order Authorizing and Permitting Sale under Deeds of Trust, dated March 25, 1939.

23. Notice of Making and Filing Order, filed March 27, 1939.

24 Petition for Appeal and Order Allowing the Same.

25. Assignment of Errors.

26. Bond for Costs on Appeal.

27. Citation on Appeal and return of service thereof.

28. Statement of Points on which Appellants intend to rely on appeal.

29. This stipulation and designation.

It is further stipulated and agreed that documents included in the record on appeal shall be abridged by omitting the full caption thereof, which shall be referred to as "Title of Court and Cause", and that, as to documents verified, the full verification be omitted and be indicated by the word "Verified".

Appellees hereby reserve the right to present to the District Judge the matter of including in the transcript of record on appeal Appraisal of May 1, 1935 (Appraisers, H. L. Bentley, Walter S. Dunn and Sol Meyers), and it is agreed that the determination of said Judge upon this question shall be conclusive.

The Clerk will please prepare and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit transcript of record on appeal in accordance with this stipulation and designation.

Dated, this 12th day of May, 1939.

LLOYD S. NIX,
Attorney for Appellants.
SWANWICK, DONNELLY & PROUDFIT,
By TOM W. HENDERSON,
Attorneys for Appellees.

[Endorsed]: Filed 4:49 P. M., May 22, 1939. R. S. Zimmerman, Clerk. M. J. Sommer, Deputy Clerk. [127]

[Title of District Court and Cause.]

ORDER FOR INCLUSION OF APPRAISAL IN TRANSCRIPT OF RECORD ON APPEAL

Good Cause Appearing Therefor, It Is Hereby Ordered that the appraisal of May 1, 1935 (appraisers H. L. Bentley, Walter S. Dunn and Sol Meyers), made and filed in the within cause, shall be included within and be made a part of the Transcript of Record on Appeal from the Order Authorizing and Permitting Sale Under Deeds of Trust, dated March 25, 1939, which Appeal is now pending.

Dated: This 22nd day of May, 1939.

WM. P. JAMES,
United States District Judge.

[Endorsed]: Filed 3:33 P. M., May 22, 1939. R. S. Zimmerman, Clerk, by M. J. Sommer, Deputy Clerk. [128]

[Title of District Court and Cause.]

ORDER

It Is Hereby Ordered that C. P. Von Herzen, Conciliation Commissioner of the County of Los Angeles, forthwith file with the Clerk of the above entitled court Petition for Appointment of Appraisers, etc., filed with said Conciliation Commissioner October 18, 1935, by Franz J. Borchard, Petition for Appointment of Appraisers, etc., filed with said Conciliation Commissioner by Franz J. Borchard and Frieda W. Borchard on or about June 7, 1938, and Appointment and Report of Appraisers, filed with said Conciliation Commissioner June 22, 1938, and that the same be included in the record on appeal in the above entitled proceedings.

Dated, this 5th day of June, 1939.

WM. P. JAMES,
U. S. District Judge.

It is hereby stipulated that the foregoing order may be made.

Dated, June 3, 1939.

LLOYD S. NIX,
Attorney for Debtors.

SWANWICK, DONNELLY & PROUDFIT,
By TOM W. HENDERSON,
Attorneys for California Bank and California Trust Co.

[Endorsed]: Filed June 5, 1939, 10:30 a.m. [129]

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 24, 442-J

In the Matter of FRANZ J. BORCHARD,
Debtor,

No. 24, 441-J

In the Matter of FRIEDA W. BORCHARD,
Debtor.

FRANZ J. BORCHARD and
FRIEDA W. BORCHARD,
Appellants,

vs.

CALIFORNIA BANK, a banking corporation, and CALIFORNIA TRUST COMPANY, a corporation,
Appellees.

STIPULATION FOR EXTENSION OF TIME

It Is Hereby Stipulated by and between the parties hereto, by and through their respective counsel, that the time for filing of record and docketing the appeal in the above entitled proceedings in the above entitled court be extended to and including the 15th day of June, 1939.

Dated, this 11th day of May, 1939.

LLOYD S. NIX,
Attorney for Appellants.

SWANWICK, DONNELLY & PROUDFIT,
By TOM W. HENDERSON,
Attorneys for Appellees.

[Endorsed]: Filed May 11, 1939. [130]

[Title of Circuit Court of Appeals and Cause.]

ORDER EXTENDING TIME

Good Cause Appearing,

It is hereby ordered that the time for filing of record and docketing the appeal in the above entitled proceedings in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco be extended to and including the 15th day of June, 1939.

Dated, this 11th day of May, 1939.

WM. P. JAMES,
United States District Judge.

[Endorsed]: Filed May 11, 1939. [131]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing 135 pages, numbered from 1 to 131, inclusive, contain original Citation; Appointment, Oath & Appraisal of May 1, 1935; Order for Reinstatement & Restraining Order; Order for Adjudication Under Section 75-S; Petition of Oct. 18, 1935, for Appointment of Appraisers; Opinion & Order of Dec. 12, 1935, re Crop Mortgage; Opinion & Order of May 15, 1936, Denying Motion to Dismiss; Order Nunc Pro Tunc Amending Order of May 15, 1936; Stipulation and Order of May 27, 1936, for Payment of Fund to California Bank; Stipulation and Order of June 10, 1937; Stipulation and Order of Dec. 20, 1937; Stipulation and Order of Mar. 7, 1938; Petition of May 24, 1938, for Appointment of Appraisers; Appraisal of June 22, 1938; Petition of California Bank to Sell Under Deeds of Trust, with Exhibits; Affidavit of Lloyd S. Nix in Opposition to Sale; Affidavit of Appraisal by C. S. Pickrell; Affidavit of Appraisal by Harry R. Bevis; Affidavit of Appraisal by B. W. Nichols with Exhibits; Counter-Affidavit of Allan J. Wilson; Counter-Affidavit of Edward Cunning; Counter-Affidavit of John S. McCrory; Order of Dec. 7, 1938; Enjoining Conciliation Commissioner; Memoran-

dum of Decision and Order of Mar. 20, 1939; Order Authorizing Sale, March 25, 1939; Notice of Order, Petition for Appeal and Order Allowing; Assignments of Error; Bond for Costs on Appeal; Statement of Points; Stipulation Designating Record on Appeal; Order for Inclusion of Appraisal in Record on Appeal; Order for Inclusion of Certain Petitions & Appraisal in Record on Appeal which together with Stipulation for Extension of Time and Order Extending Time to Docket Cause, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I Do Further Certify that the fees of the Clerk for comparing, correcting and certifying the foregoing record amount to $15.35, and that said amount has been paid me by the Appellants herein.

Witness my hand and the Seal of the District Court of the United States for the Southern District of California, this 12th day of June, A. D. 1939.

[Seal] R. S. ZIMMERMAN,
Clerk.
By EDMUND L. SMITH.
Deputy Clerk.

[Endorsed]: No. 9205. United States Circuit Court of Appeals for the Ninth Circuit. Frank J. Borchard and Frieda W. Borchard, Appellants, vs. California Bank, a banking corporation, and California Trust Company, a corporation, Appellees. Transcript of Record Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed June 13, 1939.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 9205

FRANZ J. BORCHARD and
FRIEDA W. BORCHARD,

Appellants,

vs.

CALIFORNIA BANK, a banking corporation, and CALIFORNIA TRUST COMPANY, a corporation,

Appellees.

STATEMENT OF POINTS RELIED UPON ON APPEAL

On their appeal herein, the appellants state that they intend to rely upon the points mentioned in

the Statement of Points upon which Appellants Intend to Rely on Appeal (Record, p. 121) and Assignment of Errors (Record, p. 113), filed in the District Court and set forth in the record herein.

Dated, this 12th day of June, 1939.

LLOYD S. NIX,
Attorney for Appellants

Received copy of the within Statement of Points this 12th day of June, 1939.

SWANWICK, DONNELLY & PROUDFIT,
By TOM W. HENDERSON,
Attorneys for Appellees

[Endorsed]: Filed Jun. 13, 1939. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF RECORD FOR PRINTING AND STIPULATION

The appellants designate the following as those parts of the record necessary for the consideration of the points upon which the appellants intend to rely in this appeal and for printing:

All those parts of the transcript and record on appeal provided in the "Stipulation and Designation of Contents of Record on Appeal" (Record, p. 125) herein, to be printed, and in the "Order for Inclusion of Appraisal of May 7, 1935" (Rec-

ord, p. 128), and "Order for Inclusion of Certain Petitions and Appraisal in Record on Appeal" (Record, p. 129) and, in addition, stipulations and orders relating to extension of time to docket the appeal.

It will be found that the said stipulation and orders provide for the printing of the entire transcript on appeal.

Dated, this 12th day of June, 1939.

LLOYD S. NIX,
Attorney for Appellants

It is hereby stipulated that those portions of the record mentioned in the foregoing Designation shall constitute the record on appeal herein.

Dated, June 12, 1939.

LLOYD S. NIX,
Attorney for Appellants
SWANWICK, DONNELLY & PROUDFIT,
By TOM W. HENDERSON,
Attorneys for Appellees

[Endorsed]: Filed Jun. 13, 1939.

No. 9205

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

FRANZ J. BORCHARD and FRIEDA W. BORCHARD,

Appellants,

vs.

CALIFORNIA BANK, a banking corporation, and CALIFORNIA TRUST COMPANY, a corporation,

Appellees.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PARKER PRINTING COMPANY, 543 SANSOME STREET, SAN FRANCISCO

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday, October 30, 1939.

Before: Wilbur, Mathews and Stephens,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal in above cause submitted to the court for consideration and decision on briefs on file pursuant to stipulation of Mr. Lloyd S. Nix, counsel for appellants, and of Mr. Tom W. Henderson, counsel for appellees.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Saturday, December 2, 1939.

Before: Wilbur, Mathews and Stephens,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE

By direction of the court, ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk and that

a decree be filed and recorded in the minutes of this court in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

OPINION

Before: Wilbur, Mathews and Stephens, Circuit Judges.

Stephens, Circuit Judge.

Appeal by the owners of real property from an order of the District Court in proceedings under section 75 (s) of the Bankruptcy Act [11 U.S.C.A. §203 (s)], as amended, authorizing appellees to proceed to foreclose or sell under trust deeds certain real property in Los Angeles County, California.

The appellants first brought their proceedings under Section 75 of the Bankruptcy Act in November, 1934. In May, 1935, an appraiser's report was filed fixing the value of the real property here involved at $68,550.00. Thereafter, on June 26th, 1935, the original proceedings were terminated by reason of the decision of the Supreme Court in the case of Louisville Joint Stock Land Bank v. Radford, 295 U. S. 444 involving the validity of the Act. In September, 1935, after passing the amendatory Act, the proceedings were reinstated, and the

appellees were enjoined and restrained until further order of the court from selling or causing to be sold any of the appellants' real property. The appellants were thereupon adjudged bankrupt under said Section 75 (s) and reference was made to the Conciliation Commissioner to act as Referee in Bankruptcy. On October 18, 1935, the date of the first meeting with creditors, appellants filed with the Conciliation Commissioner their petition that appraisers be appointed and their property be set aside to them under the provisions of Section 75 (s). Thereafter, with the understanding that they would be without prejudice to the rights of either party, various stipulations were entered into by appellants and appellees as to the administration of the proceedings, operation of the farming property, and the disbursement and use of proceeds of crops in 1936, 1937 and 1938. On June 7, 1938, on application of the appellants, appraisers were appointed by the Conciliation Commissioner, and their report was filed June 22, 1938, appraising the real property involved herein at $87,300.00. On November 9, 1938, the appellees filed their petition for leave to sell all of said real property under deeds of trust, and on December 5, 1938, the court made an order that the Conciliation Commissioner make no further order staying or purporting to stay proceedings against appellants or any of their property pursuant to Section 75 (s) pending determination of the petition to sell. On March 25, 1939, the court made the order from which this appeal is taken.

granting the appellees' petition and authorizing them to proceed to foreclose or sell said property. The court expressed its opinion by the following memorandum:

> "It appears that the indebtedness of the debtors to the bank has constantly increased in amount since 1934. In October of that year the total was $65,735.27. At the time the last motion was filed the indebtedness had grown to the amount of $89,246.82. The claim of the bank is that it is threatened with loss and that the property is insufficient in value to satisfy the amount of the debt owing to it. On the other hand, the debtors claim that their property is worth approximately $90,000.00. They submitted several affidavits of individuals who supported their contention with regard to the value. It appears that appraisers appointed by the conciliation commissioner appraise the total value of the property at $87,300.00. In addition to this, the bank submitted affidavits of two real estate brokers who fix the value at $55,085.00 and at $68,552.00 respectively. An employee of the bank makes affidavit that the assessed value of the property for tax purposes for the fiscal year 1937-1938 is a total of $30,400.00. It is quite a common understanding that assessors appraise real property at about 50% of its actual value. The highest appraisement figure given by the real estate brokers would seem to represent approximately the correct market value."

Appellants rely upon several assignments of error. The gist of their first assignment is that the District Court erred in permitting foreclosure of liens upon the property while the conciliation commissioner had under consideration the making of a stay order under Section 75 (s) (2). The argument seems to be that such a stay order is mandatory. To this we do not agree. It was said in Wright v. Vinton Branch of the Mountain Trust Bank of Roanoke, 300 U. S. 440, 462, wherein the Supreme Court upheld the constitutionality of Section 75 (s):

> "* * * paragraph 3 also provides that 'If . . . the debtor at any time . . . is unable to refinance himself within three years', the court may close the proceedings by selling the property. This clause must be interpreted as meaning that the court may terminate the stay if after a reasonable time it becomes evident that there is no reasonable hope that the debtor can rehabilitate himself within the three-year period."

Appellants argue in connection with this assignment of error that this court in the case of Mortgage Guarantee Co. v. Moser, 95 Fed. (2d) 944 held that after an adjudication under Section 75 (s) the case must be referred to a referee and appraisers to find out whether the three-year rehabilitation is possible, before a creditor will be permitted to foreclose its lien. An examination of the cited case, however, discloses that this court merely held that it was not an abuse of discretion for the trial court

to require a reference to the referee and appraisers. It does not follow that it would be an abuse of discretion for the court to make its own finding as to the possibility of rehabilitation. It seems clear from the case of Wright v. Vinton etc., supra, that the granting or denial of a petition for authority to foreclose in proceedings such as we have before us is at all times a matter for the exercise of the court's discretion. It is the well settled rule that an appellate court will not review the action of a lower court as to matters within its discretion unless it appears that there has been an abuse of discretion, and we find no such abuse.

Appellants' second point is to the effect that the appraisal made on June 22, 1938, appraising the real property involved herein at $87,300.00 was binding on the trial court, no objection or exception thereto having been made. Our answer to appellants' first point also answers this second objection. Since the court of first instance has complete control and discretion over the property, it is empowered to make its own findings as to the value thereof. In this connection, an examination of the statutory provisions for appraisement indicates the purpose of the appraisement. It is provided in Section 75 (s) that the appraisers shall fix the fair and reasonable market value of the property, and that either party may file objections, exceptions and take appeals therefrom within four months from the date that the referee approves the appraisal.

It is then provided [Section 75 (s) (3)] that at the end of three years, or prior thereto, the owner of the property may pay into court the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal, and that the court shall thereupon turn over to him full possession and title of said property, free and clear of encumbrances. There is a further provision in the same subdivision for a reappraisement at the request of either the creditor or debtor. The provisions for appraisement have no bearing whatever on the right of the court to authorize foreclosure if at any time it appears that the debtor is unable to refinance himself within three years.

Appellants next urge that the finding of the District Court to the effect that the appellants were or would be unable to financially rehabilitate themselves or to refinance their loans is not supported by the evidence. It is argued that the burden of showing the inability of the debtor to effectuate his own rehabilitation rests upon the creditor seeking to foreclose, and that this burden has not been sustained by appellees.

First, turning to the finding of the court as to the value of the property, we have above held that the court was empowered to make its own findings. As evidenced by the language of the trial judge's

memorandum decision, the finding of value was arrived at after consideration of two appraisements by the referee's appraisers, affidavits of several real estate brokers, and the assessed valuation of the property for tax purposes. There certainly was ample evidence to support such finding.

Next, it is argued that the court erred in including in the amount of indebtedness certain foreclosure costs and attorneys' fees, and that there are certain other errors in the court's accounting. Without passing on the question of the propriety of including the foreclosure costs in the amount of indebtedness, we turn to the pleadings before us. The allegations of the appellees' "Petition for Leave to Sell Under Deeds of Trust" are to the effect that the total indebtedness to the petitioner at the time of filing the petition was in excess of $89,000.00; that taxes in the sum of $1,763.26 were then a lien upon the property; that for more than three years last past the total amount of indebtedness had steadily been increased until at the date of the petition the total amount of increase in said indebtedness since the inception of the proceedings amounted to approximately $25,000.00; that the appellants for more than three years last past had been and were at the time of filing the petition unable to financially rehabilitate themselves or to refinance said loans; and that they had no equity in the property. The appellants filed no answer to appellees' petition. The only document filed in opposition to the peti-

tion, other than affidavits of appraisal, was an affidavit of counsel for appellants, which affidavit was based solely upon the the fact that the proceedings were at that time pending before the conciliation commissioner. Whether or not there was an issue as to the facts upon which the appellees' motion was made, and whether or not a duty rested upon the appellees to otherwise prove those facts, the court's memorandum shows that he considered all of the pertinent facts that had been presented in the proceedings before ruling on the motion.

In addition to the above, it appears without dispute that the total indebtedness including principal, advancements and interest, excluding the foreclosure costs, etc., which are complained of, amounts to in excess of $83,000.00, and is increasing rapidly because of accruing interest and taxes. In view of the court's finding that the property was valued at only $68,552.00, there was no error in the finding that the debtors are unable to financially rehabilitate themselves. From the evidence this would follow almost to a mathematical certainty. However, we are not prepared to say that the order would not have been proper even if the full value as claimed by appellant had been found to be the true value.

Appellants argue that it was error for the court to treat the total indebtedness and all of the security as a single unit for the purpose of determining the propriety of granting the petition for leave to sell,

since there were four separate parcels of land, securing separate loans. With respect to this argument, we deem it sufficient to say that the very large load of ever increasing indebtedness as demonstrated by the undisputed evidence amply supports a finding that there was no reasonable possibility of appellants' rehabilitation. In these circumstances there was no abuse of discretion in the trial court's making one finding respecting the entire indebtedness of appellants to appellees.

Appellants' final argument is to the effect that the trial court could not lawfully authorize a sale under the trust deeds before a trustee in bankruptcy was elected. This objection was not made in the court below, and cannot be considered for the first time on appeal. We do not consider it a question going to the jurisdiction of the court. In this connection we approve the language of the court in In re Ostlind Mfg. Co., 19 Fed. Supp. 836, 838-9 [D. C. D. Ore., 1937], as follows:

> "The fundamental purpose of the acts relating to bankruptcies is to conserve the properties for the benefit of the debtor and creditors alike or to reduce the assets to cash for distribution among the creditors. All the specific directions of these laws, although mandatory in form, are subservient to these major purposes. The courts have authority to deal comprehensively with the real and personal property of the bankrupt, so long as such purposes are carried out. * * *

"But it may be objected that since the provisions of the statute are mandatory, violation thereof removes the foundation for the orders. But jurisdiction once established is not so avoided. * * *

"But where a court has jurisdiction, it is not obliged to render correct decisions. It has the authority to hear and determine. If within the scope of power and founded in jurisdiction, the decision, whether right or wrong, is a judicial act and a finality."

It should be borne in mind that this is not a case where unsecured creditors are complaining of the court's order. If such were the case questions might arise which are foreign to the limited issue before us.

The decision of the District Court is affirmed.

[Endorsed]: Opinion. Filed Dec. 2, 1939. Paul P. O'Brien, Clerk. (As amended by order of Jan. 17, 1940.)

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9205

FRANZ J. BORCHARD and FRIEDA W. BORCHARD,

Appellants,

vs.

CALIFORNIA BANK, a banking corporation, and CALIFORNIA TRUST COMPANY, a corporation,

Appellees.

DECREE

Appeal from the District Court of the United States for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, affirmed with costs in favor of the appellees and against the appellants.

It is further ordered, adjudged, and decreed by this Court, that the appellees recover against the appellants for their costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered Dec. 1, 1939. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from Proceedings of Wednesday, January 17, 1940.

Before: Wilbur, Mathews and Stephens, Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION ON PETITION FOR REHEARING, CORRECTION OF OPINION OF DECEMBER 2, 1939, AND DENYING PETITION.

By direction of the Court, Ordered that the opinion heretofore rendered and filed on December 2, 1939, be amended by striking the words "dismiss the proceedings or" appearing in the last line of page 6.

It is further ordered that the opinion on petition for rehearing this day rendered *by* forthwith filed by the clerk.

Pursuant thereto, and upon consideration of the petition of appellants, filed December 27, 1939, and within time allowed therefor by rule of court for a rehearing of above cause. It is further ordered that said petition be, and hereby is denied.

[Title of Circuit Court of Appeals and Cause.]

OPINION UPON PETITION FOR REHEARING

Before: Wilbur, Mathews and Stephens, Circuit Judges.

Stephens, Circuit Judge.

Appellants have filed a petition for rehearing, contending that the case of John Hancock Mutual Life Ins. Co. v. Bartels, ___ U. S. ___, 60 S. Ct. 221 (December 4, 1939), decided by the United States Supreme Court a few days subsequent to our decision in the instant case, holds contrary to our decision.

We have examined the Hancock case, supra, and do not agree with appellants' interpretation of the case.

In the cited case the farmer had petitioned under Section 75 of the Bankruptcy Act and the petition was referred to a conciliation commissioner. The usual proceedings were had, in which the farmer failed to effect the voluntary adjustment with his creditors, and the farmer petitioned to be declared bankrupt under Section 75 (s).

The principal creditor of the farmer moved the District Court to set aside the adjudication under Section 75 (s) and to dismiss the debtor's petition, on the ground that the farmer was not entitled to avail himself of the provisions of that section since there was no reasonable possibility of financial rehabilitation. The District Court granted the motion

to dismiss, and upon appeal to the Circuit Court of Appeals the order of the District Court was reversed. The Supreme Court affirmed the decision of the Circuit Court of Appeals, holding that the Act contained no provisions for dismissal because of the absence of reasonable probability of financial rehabilitation. In so holding, the Supreme Court disapproved of certain dictum in the case of Wright v. Vinton Branch, 300 U. S. 462, to the effect that a petition could be dismissed in the absence of the probability of financial rehabilitation.

In our decision we relied on the case of Wright v. Vinton Branch, supra, which held that the Act "must be interpreted as meaning that the court may terminate the stay if after a reasonable time it becomes evident that there is no reasonable hope that the debtor can rehabilitate himself within the three-year period." This construction was given the statute in order to uphold its constitutionality. The language which we relied upon in our decision is not the language of which the Supreme Court disapproved in the Hancock case, supra.

Appellants argue that the Hancock case holds that it is the duty of the District Court to follow the statute, and argue therefrom that the District Court erred in permitting foreclosure of liens upon the property while the conciliation commissioner had under consideration the making of a stay order.

We adhere to our decision that the District Court has discretion to terminate the stay if at any time it appears that rehabilitation is not reasonably probable, and that in the instant case, it does not

appear that the District Court abused that discretion. The appellants argue that it was improper for the Court to authorize the sale under the trust deeds before the election of a trustee in bankruptcy. But this is not a question going to the jurisdiction of the court, and therefore cannot be considered for the first time on appeal.

The petition for rehearing is denied.

[Endorsed]: Opinion on Rehearing. Filed Jan. 17, 1940. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ORDER STAYING ISSUANCE OF MANDATE

Upon application of Lloyd S. Nix, Esq., counsel for the appellants, and good cause therefor appearing, it is ordered that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is stayed to and including February 23, 1940; and in the event the petition for a writ of certiorari to be made by the appellants herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

ALBERT LEE STEPHENS,
United States Circuit Judge.

Dated: San Francisco, California, January 22, 1940.

[Endorsed]: Filed Jan. 22, 1940. Paul P. O'Brien, Clerk.

[Title of Circuit Court and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two hundred (200) pages, numbered from and including 1 to and including 200, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellants, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 8th day of February, 1940.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 1, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(7533)

FILE COPY

Office - Supreme Court, U.S.
FILED
FEB 23 1940
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1939.

No. 722

FRANZ J. BORCHARD and FRIEDA W. BORCHARD,

Petitioners,

vs.

CALIFORNIA BANK, a banking corporation, and CALIFORNIA TRUST COMPANY, a corporation,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

LLOYD S. NIX,
830 Title Insurance Building, Los Angeles,
Counsel for Petitioners.

Parker Printing Company, Law Printers, Los Angeles.

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1939.

No. .....

FRANZ J. BORCHARD and FRIEDA W. BORCHARD,

Petitioners,

vs.

CALIFORNIA BANK, a banking corporation, and CALIFORNIA TRUST COMPANY, a corporation,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Petitioners respectfully file and submit this as their petition for a writ of certiorari to review a decision of the United States Circuit Court of Appeals for the Ninth Circuit, rendered on the 2nd day of December, 1939, in Case No. 9205, [Tr. pp. 186-195]; affirming an order of

the District Court of the United States for the Southern District of California [Tr. pp. 153-155]. Petition for rehearing was duly filed and was denied on the 17th day of January, 1940, and opinion upon petition for rehearing was rendered [Tr. pp. 198-200]. Mandate has been stayed until the 23rd day of February, 1940, by proper order. The case has not yet been reported.

Statement of the Matter Involved.

The matter here involved is whether, while there is pending before the Conciliation Commissioner debtors' petition for stay of proceedings and rental order in proceedings under section 75 (s) of the Bankruptcy Act, as amended (11 U. S. C. A., Sec. 203 (s)), the District Judge, having ordered that the Conciliation Commissioner make no further order staying or purporting to stay proceedings against the debtors or any of their property pursuant to section 75 (s)(2) of the Bankruptcy Act pending determination of such petition, may grant a petition of secured creditor, based upon the grounds that the debtors have no equity in the property and for more than three years have been unable to financially rehabilitate themselves, for leave to foreclose or sell debtors' farming land under its deeds of trust, and dissolve all restraining orders against such sale; and also whether, in passing upon such petition for leave to sell, the appraisal made by the appraisers appointed by the Conciliation Commissioner was binding upon the court and the court erred in determining the market value to be a much lesser amount; and also whether the district court has jurisdiction to grant such petition without the appointment of a trustee and sale of the property under the control of the court.

Reasons Relied on for Allowance of Writ.

1. The decision of the Circuit Court of Appeals is in conflict with the decision of this Honorable Court in *John Hancock Mutual Life Ins. Co. v. Bartels*, 308 U. S. ....., 60 S. Ct. 221, 84 L. Ed. .....

2. The decision of the Circuit Court of Appeals involves an important question of bankruptcy law which has not been, but should be, settled by this Honorable Court:

Whether, while there is pending before the Conciliation Commissioner a proceeding to determine whether a stay order should issue pursuant to section 75, subsection (s), subdivision (2) of the Bankruptcy Act, the Court may dissolve all restraining orders and, upon petition of the secured creditor, order debtors' farming land sold under deeds of trust upon the ground that debtors have no equity in the property and for more than three years have been unable to financially rehabilitate themselves.

3. The decision of the Circuit Court of Appeals involves an important question of bankruptcy law which has not been, but should be, settled by this Honorable Court:

Whether the district court in proceedings under section 75 (s) of the Bankruptcy Act has jurisdiction to grant the petition of a secured creditor to foreclose or sell debtor's farming land without the appointment of a trustee and sale of the property under the control of the court.

Your petitioners present herewith as part of this petition a brief setting forth more fully their views upon the questions involved and also a transcript of the record of the Circuit Court of Appeals.

Wherefore, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that court to certify and send to this court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, "No. 9205, Franz J. Borchard and Frieda W. Borchard, appellants, vs. California Bank, a banking corporation, and California Trust Company, a corporation, appellees," to the end that said case may be reviewed and determined by this court and that the said decree of the Circuit Court of Appeals for the Ninth Circuit may be reversed by this Honorable Court, and that your petitioners may have such other and further relief or remedy in the premises as to this Honorable Court may seem meet and just.

FRANZ J. BORCHARD and
FRIEDA W. BORCHARD,
Petitioners,

By LLOYD S. NIX,
Counsel.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1939.

No. .....

FRANZ J. BORCHARD and FRIEDA W. BORCHARD,

Petitioners,

vs.

CALIFORNIA BANK, a banking corporation, and CALIFORNIA TRUST COMPANY, a corporation,

Respondents.

BRIEF IN SUPPORT OF PETITION.

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(1) The Opinions and Decisions of the Courts Below.

The opinion of the United States Circuit Court of Appeals for the Ninth Circuit was filed December 2, 1939, in Case No. 9205 and appears in the transcript at pages 186-195, but has not yet been reported. The decree of the Circuit Court of Appeals, filed and entered December 1, 1939, appears in the transcript at page 196. The opinion of said court upon the petition for rehearing was filed January 17, 1940, and appears in the transcript at pages 198-200.

Petition for rehearing was filed by your petitioners on December 27, 1939, and was denied on January 17, 1940.

Order directing filing of opinion on petition for rehearing, correction of opinion of December 2, 1939, and denying petition appears in the transcript at page 197.

(2) Jurisdiction.

The jurisdiction of this Court is invoked under section 240a of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A., Sec. 347). This petition is filed in accordance with Rule 38 of this Court.

(3) Statute Involved.

The provisions of section 75 (s) of the Bankruptcy Act, as amended (11 U. S. C. A., Sec. 203 (s)) pertinent herein are as follows:

> "Sec. 75 (s). Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition and/or extension proposal, or if he feels aggrieved by the composition and/or extension, may amend his petition or answer, asking to be adjudged a bankrupt. Such farmer may, at the same time, or at the time of the first hearing, petition the court that all of his property, wherever located, whether pledged, encumbered, or unencumbered, be appraised, and that his unencumbered exemptions, and unencumbered interest or equity in his exemptions, as prescribed by State law, be set aside to him, and that he be allowed to retain possession, under the supervision and control of the court, of any part or parcel or all of the remainder of his property, including his encumbered exemptions, under the terms and conditions set forth in this section. Upon such a request being made, the referee, under the jurisdiction of the court, shall designate and appoint appraisers, as

provided for in this Act. Such appraisers shall appraise all of the property of the debtor, wherever located, at its then fair and reasonable market value. The appraisals shall be made in all other respects with rights of objections, exceptions, and appeals, in accordance with this Act: Provided, That in proceedings under this section, either party may file objections, exceptions, and take appeals within four months from the date that the referee approves the appraisal.

"Sec. 75 (s) (1). After the value of the debtor's property shall have been fixed by the appraisal herein provided, the referee shall issue an order setting aside to such debtor his unencumbered exemptions, and his unencumbered interest or equity in his exemptions, as prescribed by the State law, and shall further order that the possession, under the supervision and control of the court, of any part of parcel or all of the remainder of the debtor's property shall remain in the debtor, as herein provided for, subject to all existing mortgages, liens, pledges, or encumbrances. All such existing mortgages, liens, pledges, or encumbrances shall remain in full force and effect, and the property covered by such mortgages, liens, pledges, or encumbrances shall be subject to the payment of the claims of the secured creditors, as their interests may appear.

"Sec. 75 (s) (2). When the conditions set forth in this section have been complied with, the court shall stay all judicial or official proceedings in any court, or under the direction of any official, against the debtor or any of his property for a period of three years. During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of the court, provided he pays a reasonable rental semiannually for that part of the property of which he retains possession. The first

payment of such rental shall be made within one year of the date of the order staying proceedings, the amount and kind of such rental to be the usual customary rental in the community where the property is located, based upon the rental value, net income, and earning capacity of the property. Such rental shall be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured creditors, and applied on their claims, as their interests may appear. The court, in its discretion, if it deems it necessary to protect the creditors from loss by the estate, and/or to conserve the security, may order sold any unexempt perishable property of the debtor, or any unexempt personal property not reasonably necessary for the farming operations of the debtor, such sale to be had at private or public sale, and may, in addition to the rental require payments on the principal due and owing by the debtor to the secured and unsecured creditors, as their interests may appear, in accordance with the provisions of this Act and may require such payments to be made quarterly, semiannually, or annually, not inconsistent with the protection of the rights of the creditors and the debtors' abiiity to pay, with a view to his financial rehabilitation.

"Sec. 75 (s) (3). At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal: Provided, That upon request of any secured or unsecured creditor, or upon request of the debtor, the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and

after such hearing, fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to all secured and unsecured creditors, as their interests may appear, and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of encumbrances to the debtor: Provided, That upon request in writing by any secured creditor or creditors, the court shall order the property upon which such secured creditors have a lien to be sold at public auction. The debtor shall have ninety days to redeem any property sold at such sale, by paying the amount for which any such property was sold, together with 5 per centum per annum interest, into court, and he may apply for his discharge, as provided for by this Act. If, however, the debtor at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, or is unable to refinance himself within three years, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided for in this Act.

"Sec. 75 (s) (4). The conciliation commissioner, appointed under subsection (a) of section 75 of this Act, as amended, shall continue to act, and act as referee, when the farmer debtor amends his petition or answer, asking to be adjudged a bankrupt under the provisions of subsection (s) of section 75 of this Act, and continue so to act until the case has been finally disposed of. * * *"

(4) Statement of the Case.

Your petitioners are the debtors in proceedings instituted in the United States District Court of the Southern District of California under the provisions of Section 75 of the Bankruptcy Act, as amended (11 U. S. C. A., Sec. 203), and in which the debtors amended their petition and were adjudicated bankrupt under the provisions of Section 75 (s) of the Bankruptcy Act, as amended (11 U. S. C. A., Sec. 203 (s)). The respondents herein are the beneficiary and trustee under deeds of trust covering debtors' farming land.

On November 9, 1938, the creditor, California Bank, filed its petition for leave to sell all of said real property under the deeds of trust, upon the ground that debtors had no equity in said property and for more than three years have been unable to financially rehabilitate themselves [Tr. pp. 39-127]. Said matter was heard on December 5, 1938, and submitted to the Court for decision. On said date, the Court made an order that the Conciliation Commissioner make no further order staying or purporting to stay proceedings against the debtors or any of their property pursuant to Section 75 (s) (2) of the Bankruptcy Act, pending determination upon said petition to sell [Tr. pp. 149, 150]. On March 25, 1939, the Court made its order, from which appeal was taken, authorizing and permitting said California Bank to proceed to foreclose or

sell said property [Tr. pp. 153-155], having on March 20, 1939, handed down a memorandum of decision and order granting said petition [Tr. pp. 151-153]. No trustee was appointed by the court.

At the time that the petition for leave to foreclose or sell under trust deeds was filed by the California Bank, appellee herein, the proceedings instituted by the appellants herein under Section 75 and amended under Section 75 (s) of the Bankruptcy Act had gone forward to the extent that appraisers had been appointed by the Conciliation Commissioner, had made their report, hearings had been had, the Commissioner had announced his ruling and had requested the debtors' attorney to prepare the order for stay of proceedings under Section 75 (s), which order had been prepared and submitted, but had not been signed at the time the District Judge made his order restraining and enjoining the Commissioner from making such an order pending determination of the bank's petition for leave to foreclose [Tr. pp. 149, 150].

The debtors had filed their petition for appraisal and for possession of the property under Section 75 (s) on October 18, 1935, at the time of the first meeting of their creditors after reinstatement under Section 75 (s) as amended [Tr. pp. 14, 15].

Shortly after the reinstatement of the proceedings, the debtors made application for the payment to them of the

proceeds of the 1935 sugar beet crop and the 1935 Valencia orange crop, the creditor, California Bank, in its answer thereto claiming a lien upon all of the proceeds by reason of a chattel mortgage, raising the question of the constitutionality of the amended Section 75 (s) and praying that the proceedings be dismissed. The matter was heard by the Court and taken under submission, the District Judge under date of December 12, 1935, handing down his memorandum of conclusions and order that the chattel mortgage covered the 1935 crops [Tr. pp. 16-18]. The ruling upon the constitutional question was reserved and handed down by the District Judge under date of May 15, 1936 [Tr. pp. 18, 19].

During this period conflicting opinions as to the constitutionality of the amended Section 75 (s) were being handed down in the various districts and circuits and it was not until the decision of the United States Supreme Court, rendered March 29, 1937, in the case of *Wright v. Vinton Branch of Mountain Trust Bank*, 300 U. S. 440, 57 S. Ct. 556, 81 L. ed 736, that its constitutionality was established. During this same period and until the decision of the United States Supreme Court, February 28, 1938, in the case of *Aidair v. Bank of America Nat. Trust & Sav. Assn.*, 303 U. S. 350, 58 S. Ct. 594, 82 L. ed. 889, the authority of the Conciliation Commissioner to order the use of crop proceeds, in a case where there was a creditor holding both a crop mortgage and a trust deed upon the real property, for the maintenance and upkeep of the property, was in question. The case re-

versed the decision of the Ninth Circuit in *Bank of America National Trust & Savings Assn. v. Adair*, 90 Fed. (2d) 751, wherein Conciliation Commissioner Adair was held personally liable for such expenditures from crop proceeds.

Consequently various stipulations [Tr. pp. 21-33] were entered into, with the understanding that they should be without prejudice to the rights of either debtors or the bank, as to the administration of proceedings, operation of the farming property, and disbursement and use of crop proceeds. The stipulations were made in 1936, 1937 and 1938 and covered sums aggregating some $14,000.00.

In May, 1938, the bank announced that it would not agree to further use of crop proceeds for raising crops. Debtors then requested that the appraisal of their property proceed and stay of proceedings be granted [Tr. pp. 34, 35]. Appraisers were appointed by the Conciliation Commissioner and filed their report June 22, 1939 [Tr. pp. 35-38], appraising the parcels of real property at $33,000, $22,300, $12,000, and $20,000 respectively. Hearing thereon and for the purpose of fixing rental was set for July 26, 1938, before the Conciliation Commissioner. The appraisal had been approved, the Conciliation Commissioner had indicated his ruling, requesting counsel for the debtors to prepare an order leaving the debtors in possession under Section 75 (s) (2), and the proposed order had been submitted at the time appellee California Bank filed its petition for leave to sell all of said real property under deeds of trust [Tr. pp. 39-127].

(5) Specification of Errors.

A. Your petitioners respectfully assign as error the decision of the Circuit Court of Appeals that under the provisions of Section 75 (s) of the Bankruptcy Act as amended the court may grant a creditor's petition to sell debtors' farming land under its trust deeds while the conciliation commissioner has under consideration the making of a stay order under Section 75 (s) (2) and that the granting or denial of such a petition is at all times a matter for the exercise of the court's discretion.

B. Your petitioners further respectfully assign as error the decision of the Circuit Court of Appeals that the provisions of Section 75 (s) of the Bankruptcy Act as amended for appraisement have no bearing whatever on the right of the court to authorize foreclosure if at any time it appears that the debtor is unable to refinance himself within three years.

C. Your petitioners further respectfully assign as error the decision of the Circuit Court of Appeals that the District Court has jurisdiction to grant the petition of a secured creditor to foreclose or sell debtors' farming land under its trust deeds without the appointment of a trustee and sale of the property under the control of the court.

(6) Summary of the Argument.

Point I. While there is pending before the Conciliation Commissioner a proceeding to determine whether a stay order should issue pursuant to Section 75 (s) of the Bankruptcy Act as amended, the Court should not dissolve all restraining orders and, upon petition of a secured creditor, order debtors' farming land sold under deeds of trust upon the ground that debtors have no equity in the property and for more than three years have been unable to financially rehabilitate themselves.

(a) Section 75 (s) provides for stay of proceedings for three years after compliance with provisions as to request to remain in possession and appraisal, during which time debtor shall retain possession, provided he pays reasonable rental.

(b) A debtor adjudicated bankrupt under Section 75 (s) is entitled to have his proceeding for relief entertained and his property dealt with in accordance with that subsection.

(c) Definite course of procedure is prescribed by Section 75 (s).

(d) Provisions of the statute are mandatory.

(e) Three-year period commences from making of order staying proceedings under Section 75 (s) (2).

Point II. Appraisal of debtors' property having been made pursuant to said Section 75 (s), and no objection or exception having been taken thereto, such appraisal and the amount thereof were binding on the court in passing

upon the petition of secured creditor for leave to sell said property under its deeds of trust.

(a) Section 75 (s) provides for appointment of appraisers and specifies rights as to objections, exceptions and appeals.

(b) It is mandatory that party desiring review of an order made by referee file petition therefor, and that method of reviewing an order of a referee is exclusive.

(c) Procedure followed by creditor herein constitutes a collateral attack upon the appraisal made pursuant to the provisions of Section 75 (s).

Point III. In proceedings under Section 75 (s) of the Bankruptcy Act, the District Court has no jurisdiction to grant the petition of a secured creditor to foreclose or sell debtors' farming land without the appointment of a trustee and sale of the property under the control of the court.

(a) The filing of a petition for relief under Section 75 of the Bankruptcy Act subjects the farmer and all his property to the exclusive jurisdiction of the federal court.

(b) Upon amendment of debtor's petition under Section 75 (s) of the Bankruptcy Act, the rights and obligations of the parties are determined by the provisions of said Section 75 (s).

(c) Section 75 (s) (3) provides the only method of liquidation.

(d) Court has no jurisdiction to authorize sale before trustee is appointed.

POINT I.

While There Is Pending Before the Conciliation Commissioner a Proceeding to Determine Whether a Stay Order Should Issue Pursuant to Section 75 (s) of the Bankruptcy Act as Amended, the Court Should not Dissolve All Restraining Orders and, Upon Petition of a Secured Creditor, Order Debtors' Farm Land Sold Under Deeds of Trust Upon the Ground That Debtors Have No Equity in the Property and for More Than Three Years Have Been Unable to Financially Rehabilitate Themselves.

(a) Section 75 (s) Provides for Stay of Proceedings for Three Years After Compliance With Provisions as to Request to Remain in Possession and Appraisal, During Which Time Debtor Shall Retain Possession, Provided He Pays Reasonable Rental:

"Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition and/or extension proposal, or if he feels aggrieved by the composition and/or extension, may amend his petition or answer, asking to be adjudged a bankrupt. Such farmer may, at the same time, or at the time of the first hearing, petition the court that all of his property, wherever located, whether pledged, encumbered, or unencumbered, be appraised, and that his unencumbered exemptions, and unencumbered interest or equity in his exemptions, as prescribed by State law, be set aside to him, and that he be allowed to retain

possession, under the supervision and control of the court, of any part or parcel or all of the remainder of his property, including his encumbered exemptions, under the terms and conditions set forth in this section. Upon such a request being made, the referee, under the jurisdiction of the court, shall designate and appoint appraisers, as provided for in this Act. Such appraisers shall appraise all of the property of the debtor, wherever located, at its then fair and reasonable market value. The appraisals shall be made in all other respects with rights of objections, exceptions, and appeals, in accordance with this Act: Provided, That in proceedings under this section, either party may file objections, exceptions, and take appeals within four months from the date that the referee approves the appraisal."

Section 75 (s) *Bankruptcy Act*, 11 U. S. C. A. Sec. 203 (s).

"When the conditions set forth in this section have been complied with, the court shall stay all judicial or official proceedings in any court, or under the direction of any official, against the debtor or any of his property for a period of three years. During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of the court, provided he pays a reasonable rental, semiannually for that part of the property of which he retains possession. * * *"

Section 75 (s) (2) *Bankruptcy Act*, 11 U. S. C. A. Sec. 203 (s).

(b) A Debtor Adjudicated Bankrupt Under Section 75 (s) Is Entitled to Have His Proceeding for Relief Entertained and His Property Dealt With in Accordance With That Subsection.

John Hancock Mutual Life Ins. Co. v. Bartels, 308 U. S. ....., 60 S. Ct. 221, 84 L. ed. .....

(c) Definite Course of Procedure Is Prescribed by Section 75 (s).

"Subsection (s) of Section 75 as amended by the Act of August 25, 1935, prescribes a definite course of procedure."

John Hancock Mutual Life Ins. Co. v. Bartels, supra, 60 S. Ct. at page 223.

(d) Provisions of the Statute Are Mandatory.

Section 75 (s) (11 U. S. C. A. Sec. 203), *supra,* specifically provides for appraisal of debtor's property and that the debtor shall be allowed to retain possession, under the supervision and control of the Court, of any part or parcel or all of the remainder of his property (after setting aside to debtor his exemptions).

"Retention by Debtor. After the property is appraised and the debtor's unencumbered exceptions set aside, the referee shall order that any or all of the remainder of the property shall remain in the possession of the debtor, under the control of the court. *This requirement is mandatory and there are no grounds stated in the statute on which possession may be denied to the debtor."* (Italics ours.)

1938 Supplement, Collier, 13th Ed., p. 290.

"Stay of Proceedings by Secured Creditors. * * * It should be noted that the debtor is absolutely entitled to the three years' stay and possession of the property 'when the conditions set forth in this section have been complied with.' The only conditions seem to be the filing of a petition or answer asking for an extension of composition; failure to secure acceptance of the proposal or being aggrieved thereby; amendment of the petition or answer asking to be adjudged a bankrupt; and thereafter an appraisal under subdivision s. The creditors must submit to the stay, the debtor's possession under payment of rental, and his right to purchase at the appraised value, subject only to the right to have encumbered property sold at auction."

1938 Supplement, Collier, 13th Ed., p. 292;

Wright v. Vinton Branch of Mountain Trust Bank, 300 U. S. 440, 468, 57 S. Ct. 556, 81 L. Ed. 736.

Your petitioners respectfully urge that they have met all of the conditions required of them under Section 75 (s) of the Bankruptcy Act, to entitle them to possession of their real property and a stay order thereunder.

(e) Three-Year Period Commences From Making of Order Staying Proceedings Under Section 75 (s) (3).

"In support of the contention that the legislation is unconstitutional, it is pointed out that the delay in the enforcement of the mortgage under section 75 of the Bankruptcy Act as amended by subsection (s) may exceed the term of three years; that months may be consumed in the effort to obtain a composition or extension of the debtor's obligations with the consent of the creditors; that when a petition is filed praying for the relief outlined in subsection (s) a further period of months may be consumed in having the property appraised and putting the debtor in the position which he must occupy before the stay is granted;"

Wright v. Vinton Branch of Mountain Trust Bank, 300 U. S. 440, 468, 57 S. Ct. 556, 81 L. Ed. 736.

The respondent bank has contended that the provision of paragraph 3 of Section 75 (s) "If . . . the debtor at any time . . . is unable to refinance himself within three years, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided in this Act" does not refer to the three-year period under the stay order, but in this case allows a sale outside of bankruptcy to be authorized by the court, during the pendency before the Conciliation Commissioner of the matter of the making of a rental order and stay of proceedings. Petitioners respectfully submit that the "three years" mentioned in the passage from the act above

quoted is the "three-year" period of the stay to be ordered under Section 75 (s) (2).

> "* * * paragraph 3 also provides that 'If . . . the debtor at any time . . . is unable to refinance himself within three years' the court may close the proceedings by selling the property. This clause must be interpreted as meaning that the court may terminate the stay if after a reasonable time it becomes evident that there is no reasonable hope that the debtor can rehabilitate himself within the three-year period."
>
> *Wright v. Vinton Branch, supra,* at page 462.

But, petitioner respectfully submit that this clause does not authorize the court to order that no stay be ordered by the Conciliation Commissioner until the court shall have passed upon a petition for leave to sell under creditor's trust deeds, as was done in the present case. The decision rendered herein rests upon such an interpretation of this clause, the court holding that the granting or denial of a petition for authority to foreclose is at all times a matter for the exercise of the court's discretion. [Tr. pp. 189, 199, 200.]

It is respectfully submitted that the court in the present case failed to follow the orderly procedure which is the scheme and mandate of the statute and which is outlined in detail in the *Bartels* case, *supra*, 60 S. Ct. at page 244. It is further submitted that there is no authority for the granting of such a petition after the adjudication under Section 75 (s) and before the making of the rental order.

II.

Appraisal of Debtors' Property Having Been Made Pursuant to Said Section 75 (s), and No Objection or Exception Having Been Taken Thereto, Such Appraisal and the Amount Thereof Were Binding on the Court in Passing Upon the Petition of Secured Creditor for Leave to Sell Said Property Under Its Deeds of Trust.

(a) **Section 75 (s) Provides for Appointment of Appraisers and Specifies Rights as to Objections, Exceptions and Appeals.**

"* * * Upon such a request being made, the referee, under the jurisdiction of the court, shall designate and appoint appraisers, as provided for in this Act. Such appraisers shall appraise all of the property of the debtor, wherever located, at its then fair and reasonable market value. The appraisals shall be made in all other respects with rights of objections, exceptions, and appeals, in accordance with this Act: Provided, That in proceedings under this section, either party may file objections, exceptions and take appeals within four months from the date that the referee approves the appraisal."

Section 75 (s) *Bankruptcy Act,* 11 U. S. C. A. Sec. 203 (s).

No objections, exceptions or appeal from the appraisal herein were taken, and your petitioners respectfully urge that the procedure followed by the respondent bank constituted a collateral attack upon the appraisal made pursuant to order and appointment of the Conciliation Commissioner and of the proceedings before the Conciliation Commissioner for the fixing of rentals and stay of proceedings.

By General Order in effect at the time of the filing of the petition for leave to sell herein, it was provided:

> "In so far as is consistent with the provisions of Section 75 of this general order, the conciliation commissioner shall have all the powers and duties of a referee in bankruptcy and the general orders in bankruptcy shall apply to proceedings under said section."
>
> General Order L, Section 11;
>
> See also present General Order 50 (11).

General Order XXVII, likewise in effect at the time of the filing of the petition to sell herein, is mandatory in requiring a petition of the party desiring a review of an order made by a referee and, in the absence of such a petition, the court has no authority to review the action of the referee.

> Section 2 (10) *Bankruptcy Act*, 11 U. S. C. A., Sec. 11 (10);
>
> *In re Russell* (D. C., Cal.), 105 Fed. 501;
>
> *In re Lyders* (D. C., Cal.), 16 Fed. Supp. 213; affirmed 88 Fed. (2d) 9.

Rule 84 of the rules of the local District Court, also then in effect, required that

> "a petition for a review of an order made by a referee as provided in General Order XXVII of the General Orders in Bankruptcy must be filed with the referee within ten days from the date of notice of such order."

It has been held that should a person fail to observe a supplemental rule placing a time limit (ten days) upon the filing of the petition for review, he forfeits the advantage which it affords him. Of this advantage he cannot later avail himself by a writ of certiorari, appeal or other indirect process, for the method of reviewing an order of

a referee prescribed by General Order XXVII and the supplemental rule of the District Court is exclusive.

In re David (C. C. A. 3), 33 Fed. (2d) 748; certiorari denied 280 U. S. 514, 50 S. Ct. 19, 74 L. Ed. 585.

This provision as to review is now incorporated as Section 39c in the Bankruptcy Act, as amended by the Chandler Act (11 U. S. C. A., Sec. 67).

The presentation to the district judge of the bank's petition for leave to foreclose or sell under its trust deeds, in which petition were set forth the valuations, totaling $87,300.00, at which the respective parcels were appraised pursuant to order of the Conciliation Commissioner, [Tr. p. 53], and wherein it was also alleged that the property securing the loans could not be sold for a sum in excess of $65,000.00, supported by affidavits as to market value [Tr. pp. 129-142], was an indirect attack upon the appraisal "at its then fair and market value" (Sec. 75 (s) (11 U. S. C. A., Sec. 203 (s)),) which had been had in said proceedings pursuant to the order of the Conciliation Commissioner.

Your petitioners respectfully submit that the appraised value of $87,300.00 reported by the appraisers appointed by the Conciliation Commissioner was binding upon the court, no objection or exception having been taken thereto and no appeal having been taken therefrom in the manner provided in said Section 75 (s), that the district judge erred in determining the market value to be $68,552.00, and further that the Circuit Court erred in its decision that the provisions of Section 75 (s) of the Bankruptcy Act for appraisement of debtor's property have no bearing whatever on the right of the court to authorize foreclosure if at any time it appears that the debtor is unable to refinance himself within three years.

III.

In Proceedings Under Section 75 (s) of the Bankruptcy Act, the District Court Has No Jurisdiction to Grant the Petition of a Secured Creditor to Fore-Close or Sell Debtors' Farming Land Without the Appointment of a Trustee and Sale of the Property Under the Control of the Court.

(a) The Filing of a Petition for Relief Under Section 75 of the Bankruptcy Act Subjects the Farmer and All His Property to the Exclusive Jurisdiction of the Federal Court.

Section 75 (n) *Bankruptcy Act*, 11 U. S. C. A., Sec. 203 (n);

Kalb v. Feuerstein, ... U. S. ....., 60 S. Ct. 343, ... L. Ed. .....

(b) Upon the Amendment of Debtor's Petition Under Section 75 (s) of the Bankruptcy Act, the Rights and Obligations of the Parties Are Determined by the Provisions of Said Section 75 (s).

Wright v. Vinton Branch of Mountain Trust Bank, supra.

Filing of mortgagor's petition under Bankruptcy Act for extension of time to pay his debt deprives mortgagee of the remedies under the deed of trust and notes secured thereby, and mortgagee can proceed only as provided by such Act.

In re De Tamble, 88 Fed. (2d) 893.

(c) Section 75 (s) (3) Provides the Only Method of Liquidation.

The only method for liquidation provided by Section 75 (s) is by the appointment of a trustee and sale of the property under the jurisdiction of the court.

Section 75 (s) (3), *Bankruptcy Act*, 11 U. S. C. A., Sec. 203 (s).

John Hancock Mutual Life Insurance Co. v. Bartels, supra.

(d) Court Has No Jurisdiction to Authorize Sale Before Trustee Is Appointed.

The bankruptcy court, or referee, in proceedings under the general Bankruptcy Act, cannot lawfully authorize a sale under trust deed before a trustee in bankruptcy is elected, and if it does so, the sale is void; and the referee has no power, and so no jurisdiction, to enter an order for a sale outside the bankruptcy court of the encumbered real estate of the bankrupt estate prior to the election of a trustee.

Comer v. John Hancock Mut. L. Ins. Co: (C. C. A. 8), 80 Fed. (2d) 413, 417.

Conclusion.

Petitioners, in conclusion, urge upon this Honorable Court that the decision of the Circuit Court of Appeals is at variance with the decision of this Honorable Court in *John Hancock Mutual Life Ins. Co. v. Bartels,* 308 U. S. ....., 60 S. Ct. 221, 84 L. Ed. ....., and that an important question of bankruptcy law, concerning proceedings for relief under Section 75 (s) of the Bankruptcy Act, is involved; and it is therefore submitted that this case is one calling for the exercise by this Honorable Court of its supervisory powers, in order that the errors herein pointed out may be corrected, that the law may be properly and authoritatively defined, and that the order of the District Court and the decree of the Circuit Court of Appeals be reversed in order that justice may be done to petitioners, and that to such end a writ of certiorari should be granted.

Respectfully submitted,

LLOYD S. NIX,
Counsel for Petitioners.

FILE COPY

FILED
MAR 29 1940
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 752

FRANZ J. BORCHARD AND FRIEDA W. BORCHARD,
Petitioners,

vs.

CALIFORNIA BANK, A BANKING CORPORATION, AND CALIFORNIA TRUST COMPANY, A CORPORATION.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

REPLY BRIEF FOR PETITIONERS.

WILLIAM LEMKE,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 752

FRANZ J. BORCHARD AND FRIEDA W. BORCHARD,
Petitioners,

vs.

CALIFORNIA BANK, A BANKING CORPORATION, AND CALIFORNIA TRUST COMPANY, A CORPORATION,
Respondents.

REPLY BRIEF FOR PETITIONERS.

Question Involved.

The question involved is whether under Section 75 (s) of the Bankruptcy Act the District Court may, upon motion of the creditor, terminate the stay and permit foreclosure of the mortgage on the farmer-debtor's farm because it, the court, feels that the farmer-debtor had an opportunity to effect rehabilitation and has been unable to do so. In other words, may the lower court with impunity ignore the procedure laid down by an Act of Congress and follow a procedure not only in violation of the plain language of the Act but contrary to the decision of the Supreme Court of the United States in the *Bartels* case, 60 S. Ct. 221?

Argument.

In the case at bar the petitioners' original petition was dismissed on June 26, 1935, because the Supreme Court of the United States held Section 75 (s) unconstitutional in the *Radford* case, 295 U. S. 555. After the reenactment of Section 75 (s) the lower court, on September 20, 1935, reinstated the petitioners' petition. On October 18, 1935, the petitioners filed their petition for the appointment of appraisers.

Thereafter, by stipulations and mutual consent of petitioners and the respondent bank all proceedings were stayed until November 10, 1938, when the bank asked for leave to sell under its trust deed. By virtue of these stipulations the petitioners paid the following amounts to the respondent: May 27, 1936—$3,900; June 10, 1937—$2,494.83; December 20, 1937—$3,556.64; and March 7, 1938—$3,450 or a total of $13,401.47 (See R. 21 to 33 inclusive). These stipulations provide "that nothing herein shall prejudice or jeopardize the rights of the debtors" (R. bottom of page 25).

The Circuit Court of Appeals of the Ninth Circuit in its opinion confirming the lower court says: "Thereafter with the understanding that they would be without prejudice to the rights of either party various stipulations were entered into by appellants and appellee as to the administration of the proceedings, and operations of the farming property, and the disbursements and use of the proceeds of the crops in 1936, 1937 and 1938" (From the court's opinion, R. 187).

The fact that by these mutual agreements and stipulations the proceedings under Section 75 were held in a *status quo* has nothing to do with the question of rehabilitation under Section 75 (s), nor did it affect the right of the farmer-debtor to ask the further protection of the

provisions of Section 75 (s) when the bank terminated these stipulations and asked for leave to sell.

Provisions Mandatory.

The provisions of Section 75 (s) *are mandatory*, and while the *stay of three years is not absolute, the statute itself provides the exception. No court has authority* to sell the debtor's property *because his liabilities exceed his assets*, or because, it the court, concludes that the debtor cannot be rehabilitated. *To do so is reading something into the statute that is not there.* It is judicial legislation.

> "Section 75 (s) (2) *When the conditions set forth in this section have been complied with, the court shall stay all judicial or official proceedings* in any court, or under the direction of any official, against the debtor or any of his property *for a period of three years. During such three years the debtor shall be permitted to retain possession* of all or any part of his property, in the custody and under the supervision and control of the court, *provided he pays a reasonable rental* semi-annually for that part of the property of which he retains possession. * * * The court, in its discretion, if it deems it necessary to protect the creditors from loss by the estate, and/or to conserve the security, *may order sold any unexempt perishable property of the debtor, or any unexempt personal property not reasonably necessary for the farming operations* of the debtor, such sale to be had at private or public sale, and *may*, in addition to the rental, *require payments on the principal due and owing by the debtor* to the secured or unsecured creditors, as their interests may appear, in accordance with the provisions of this Act, and may require such payments to be made quarterly, semi-annually or annually, not inconsistent with the protection of the rights of the creditors, and *the debtor's ability to pay, with a view to his financial rehabilitation.*"

In re Chicago, Rock Island & Pacific Ry. Co. (7 C. C. A.), 72 F. (2d) 443, the court said:

> "Congress having the express authority to enact legislation on the subject matter of bankruptcy, was the sole judge of the means and their appropriateness to the purpose of the legislation so long as said means did no violence to the Constitution.
>
> "The sale contemplated by Section 75 (s) 3 is *authorized only at the end of the moratorium period.* A petition to dismiss the proceeding, and another to dissolve the injunction against the foreclosure of the mortgage, have been denied by one of my colleagues; and the section of the Act under which the proceeding was instituted has provided no distinct method of disclaimer on the part of the court." *In re McIntyre*, 23 Fed. Supp. 342.
>
> "Section 75 (s) (3) fails to disclose any authority in this court to dismiss this proceeding or to strike from the schedule the lands involved, were it established that the debtor will be unable to refinance himself within three years." *In re Lines*, C. C. H. 51, 605.

The Act specifically *states* that an appraisal is to be made of all of the farmer's property "*at its then fair and reasonable market value.*" That is to say that the reasonable market value *fixes the debtor's assets and also the limit* of his liabilities. That is the rule in all bankruptcy proceedings as far as liabilities are concerned. *It is not what* the bankrupt *owes but* what the property *brings* that finally settles the question of assets and liabilities, and balances the debit and the credit sides of the ledger. This via a discharge.

It then *provides* that *the farmer is* to remain in *possession for a period of three years* and pay the "usual and customary rental," on the *appraised* value, which rental is to be fixed by the court, and it provides further that if it

becomes necessary, to protect the creditors, the court may require additional payments, according to the *debtor's ability to pay* with a *view to his rehabilitation. Nowhere does the Act provide* that the District Court may shirk its duty and responsibility, and order the property sold.

Bartels Case.

In the *Bartels* case Justice Hughes says:

> "*The subsections of Section 75 which regulate the procedure in relation to the effort of a farmer-debtor to obtain a composition or extension contain no provision for a dismissal because of the absence of a reasonable probability of the financial rehabilitation of the debtor—nor is there anything in these subsections which warrants the imputation of lack of good faith to a farmer-debtor because of that plight. The plain purpose of Section 75 was to afford relief to such debtors who found themselves in economic distress however severe, by giving them the chance to seek an agreement with their creditors* (*subsections* (*a*) *to* (*r*)) *and, failing this, to ask for the other relief afforded by subsection* (*s*). The farmer-debtor may offer to pay what he can, as Bartels did, *and he is not to be charged with bad faith in taking the course for which the statute expressly provides.*" 60, S. Ct. 221.

Cannot Surrender Jurisdiction.

When a farmer-debtor comes into a Court of Bankruptcy, he comes into a Court of Equity. He *has a legal right* to ask for *a three year period* in which to refinance himself upon paying a reasonable rental and complying with other lawful orders of court. This *right* the District Court *may not deny him.* The court cannot escape the duties placed upon it by the Act.

> "For the court to afford the relief which the section as amended contemplates, it is necessary that the *exclusive* and *paramount jurisdiction* of the court *over* the

property of the bankrupt *be maintained;* and there can be no question but that the provisions of subsections (n) and (o) apply as well to proceedings continued under subsection (s) as to proceedings under the other provisions of section 75" *Bradford* v. *Fahey*, 76 F. (2d) 628 (C. C. A. 4th).

Section 75 (s).

This section seems to have been the stumbling block of some District Courts. *Every conceivable* attempt has been made *to destroy its effectiveness.* Yet, there is nothing new in this section. It simply applies old and well understood principles of law to Agriculture. These principles have been employed for years to industry under receiverships, trusteeships and bankruptcy. While this section has saved hundreds and thousands of homes *many more* could have been saved if all the District Courts had *entered into the spirit of the Act.*

In the *Bradford* case, 76 F. (2d) 628, Judge Parker of the Circuit Court of Appeals Fourth Circuit says:

> "As a matter of fact, no property in any real sense is taken from the lienholder by reason of the provisions of the act. The mortgaged property has already shrunk in value before the proceedings under the act are instituted; and the proceedings merely scale down the secured portion of the debt to the value of the encumbered property and transfer the lien of the encumbrance to the proceeds of that property when paid into court. While the lienholder is delayed in getting his money, the delay is probably not for so long a time, or the loss so great, as would result to him if the act were not passed and wholesale foreclosures of real estate mortgages should result."

In the *Radford* case, 8 F. Supp. 489, Judge Simon of the Circuit Court of Appeals Sixth Circuit says:

> "It is true that the appellant will not be able to collect the face value of its mortgages, nor the accrued

interest thereon. But this is a loss it has already sustained, not through the operation of the statute, but through the default, insolvency and bankruptcy of its debtor."

Has Equity in His Farm.

The fact is that Section 75 *gives every farmer*, who is insolvent or financially embarrassed, *a legal equity in his farm*. That equity *is the legal right to continue in possession* of his farm—live in his home—*for three years, provided he complies* with the orders of the court, *pays a reasonable rental*, and additional payments, if so ordered by the court. That equity gives him an opportunity to refinance and reestablish himself as a solvent rather than as an insolvent farmer.

That equity is analogous to the equity of redemption now existing in many States. In North Dakota and in other States the farmer has a period of one year in which to redeem from a mortgage foreclosure sale. During that year *he has a right of possession* and *is entitled to the rents and profits*. That is an equity that every creditor *must* and *does* respect. It is a *legal right* given to *every owner* of real estate.

No State or Federal Court *has ever* attempted to defeat the equity of redemption by holding that if the person's liabilities *exceed* his assets that then, he is *not entitled to possession and the right of redemption*. No court, either State or Federal, *has ever yet held* that the person who wishes to take advantage of the "equity of redemption" would have to *convince* the court, *in advance*, that he would *be able not only to redeem but to pay all* of his indebtedness. Such a decision would be considered absurd.

Equally absurd are the decisions that hold that under Section 75 a farmer *must show* that his assets *exceed* his liabilities, or else his farm will be ordered to be sold.

Doubly absurd are the decisions that hold that the farmer *must convince* the court, *three years in advance*, that he *will be able* to refinance himself at the end of three years, and *not only pay the market value* for his property *but all he owes*. Such a holding, whether deliberate or otherwise, annuls an Act of Congress, *not because* it is *unconstitutional but because of judicial legislation.* The Supreme Court of the United States *has never given* its approval to any such decisions. We are satisfied *it never will.*

Under Section 75, by expressed terms, the farmer has *a stay of proceeding, a right of possession*; that is similar to an equity of redemption for *three years.* This stay, of course, can be cut short if he fails to pay the reasonable rental, plus such additional payments as ordered by the court. The mere fact that the provisions of Section 75 *have been emasculated* by some District Courts *does not change the intent of Congress, or the language* of Section 75. We feel confident that the Supreme Court in this case *will once and for all* set these District Courts right.

The right that Section 75 gives to the farmer to remain in possession *for three years* upon paying a reasonable rental is a property right. It is an equity which Congress gave him. It does not depend upon judicial discretion. During that three years the farmer may refinance and rehabilitate himself financially. It was the *hope of Congress* and *it is the hope of the farmer* that during those three years *he might be able* to refinance and rehabilitate himself. That hope *no court may cut short* unless he fails to pay his rental or comply with the lawful orders of the court.

Adair v. *Bank of American National Trust & Savings Association* (Cal.), 303 U. S. 350;

First National Bank & Trust Company of Bridgeport, Connecticut, v. *Francis E. Beach*, 301 U. S. 435;

Wright v. *Union Central Life*, 304 U. S. 502.

Conclusion.

In conclusion we submit that the decision of the Circuit Court of Appeals of the Ninth Circuit in the case at bar is in conflict with the decision of the Circuit Court of Appeals of the Fifth Circuit in the *Bartels* case, which decision was confirmed by this court. The decision in the case at bar was rendered on December 2, 1939, two days before this Court confirmed the decision of the Circuit Court of the Fifth Circuit in the *Bartels* case. It is clearly in violation of the plain language of Section 75 (s) of the Bankruptcy Act and contrary to the decision of this Court in the *Bartels* case.

It is also contrary to the decision of this Court in the cases of *Leona Piatt Gray, and others*, v. *Union Joint Stock Land Bank of Detroit*, Nos. 365, 366 and 367, October Term, 1939, recently decided by this Court and in the cases of *Florence Morrison and Florence Morrison, Executrix* v. *The Federal Land Bank of Louisville, et al.*, Nos. 412 and 413, October Term, 1939. In these this Court reversed the Circuit Court of Appeals of the Sixth Circuit in the following manner:

> "*Per curiam:* The motions for leave to proceed *in forma pauperis* are granted.
>
> "The petitions for writs of certiorari are also granted, the judgments of the Circuit Court of Appeals are reversed, and the causes are remanded to the District Court for further proceedings.
>
> "See John Hancock Mutual Life Ins. Co. *v.* Benno Bartels, No. 33, decided December 4, 1939."

Respectfully submitted,

WILLIAM LEMKE,
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FILED

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.
No. 752

FRANZ J. BORCHARD and FRIEDA W. BORCHARD,
Petitioners,

vs.

CALIFORNIA BANK, a banking corporation, and CALIFORNIA TRUST COMPANY, a corporation,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Respondents, California Bank and California Trust Company, respectfully file and submit this Brief in Opposition to the Petition for Writ of Certiorari filed herein.

Statement of Case.

This is a farm debtor proceeding under the Bankruptcy Act, commenced on November 17, 1934, by the filing of a petition pursuant to Section 75. The history of the case is fully disclosed by the petition of respondents for leave to sell. [Tr. pp. 39-137.] It shows that for more than four years prior to the filing of that petition, the debtors had availed themselves through both Federal and State Courts of all possible bankruptcy and moratory legislation, they having resorted first to one court and then the other as their convenience and necessity required to obtain the full benefit of all laws, both Federal and State which could be of advantage to them. The events leading up to the Order which is the subject of attack may be summarized as follows:

Dates	
November 17, 1934	Petition under Section 75 of the Bankruptcy Act filed by debtors and referred to the Conciliation Commissioner.
March 25, 1935	Appraisers appointed.
May 1, 1935	Appraiser's report filed fixing the value of the real property at $68,550.00.
May 6, 1935	Debtors adjudicated bankrupts under Section 75 (s).

June 26, 1935	Proceedings dismissed upon constitutional grounds following decision of United States Supreme Court in *Louisville Joint Stock Land Bank v. William W. Radford*, 295 U. S. 555.
June 26, 1935	Petition for moratorium relief under the Mortgage and Trust Deed Moratorium Act of California filed in Superior Court of California, in and for the County of Los Angeles.
July 30, 1935	Order granting moratorium relief made by Superior Court.
September 20, 1935	Petition for reinstatement under Section 75 (s), as amended, filed by debtors in United States District Court.
September 20, 1935	Order for reinstatement and restraining order made and filed.
September 30, 1935	Order vacating moratorium order of Superior Court filed.
October 18, 1935	Petition for appointment of appraisers filed.
May 24, 1938	Petition for appointment of appraisers filed.
June 22, 1938	Appraiser's report made fixing value of real property at $87,300.00.
November 10, 1938	Petition of California Bank for leave to sell under trust deeds filed.
March 25, 1939	Order authorizing and permitting sale under trust deeds filed.

At the inception of this proceeding, respondents were the beneficiary and trustee, respectively, under four deeds of trust, securing loans of $65,735.27. As early as 1933, it became necessary for respondent California Bank to make advancements for the payment of taxes, bond installments and insurance in order to protect the security for its loans. During the pendency of the within proceeding, further advancements had to be made by respondent Bank and interest and costs continued to accrue until in 1938, just prior to the filing of respondent's Petition for Leave to Sell, the debt had grown to $89,246.82. The rate of increase is shown by the following table:

Date	Total Amount of Indebtedness
October 26, 1934	$65,735.27
October 26, 1935	70,826.21
October 26, 1936	74,805.61
October 26, 1937	81,437.92
October 26, 1938	89,246.82

[Tr. p. 52.]

The precise condition of respondents' loans was shown on an exhibit attached to the Petition for Leave to Sell. [Tr. pp. 125, 127.] Reference is made to this statement for a detailed account of principal, interest, advancements and costs involved in connection with each loan.

At the time of filing respondents' Petition for Leave to Sell on November 5, 1938, there was unpaid on the real property delinquent taxes for 1937-38 in a sum exceeding $925.00, and taxes for 1938-39 were a lien then due in the sum of $1763.26. [Tr. p. 51.]

During 1936, 1937 and 1938 the proceeds of crops grown on the property were received and dispersed under stipulations by the respondent Bank, substantially all of such proceeds going toward the maintenance of the property. Approximately $14,347.92 was handled in this manner pursuant to stipulations which expressly provided that they were without prejudice to the rights of the parties and of this total sum, only $2,056.64 was applied upon respondents' loans. [Tr. p. 27.] This sum was paid to respondent from the proceeds of sugar beets and on the same date petitioners received from this source for their own use $1,500.00. This was in addition to wages received by petitioner, Franz J. Borchard, on other occasions for all work performed by him in connection with the crops. [Tr. p. 27.] All of these moneys and all of these crops grown upon the property were subject to a first lien in favor of respondent Bank under a Mortgage of Crops which had previously been held to be a valid and continuing lien thereon by a final Order of the District Court. [Tr. pp. 16-18.]

Respondent Bank's loans having increased at a constantly expanding ratio for more than six years, and the Bank being of the conviction that there was no hope or possibility of rehabilitation, a Petition was filed with the Court for an Order Dissolving Its Restraining Order and Authorizing and Permitting a Sale of the Property. At this point, the Bank was also convinced that the indebtedness of petitioners had grown beyond the total value of the security and that any further postponement of liquidation could only be at the expense and damage and to the irreparable loss of the Bank.

Anticipating the filing of the Bank's Petition, petitioners filed with the Conciliation Commissioner another

Petition for Appointment of Appraisers, and a Petition for a Three-year Statutory Stay Order under Section 75(s) (2). In other words, having enjoyed the fullest latitude for more than four years under the protection of the bankruptcy law without making any progress toward rehabilitation, petitioners, nevertheless, sought to obtain an Order giving them three additional years upon the property at respondents' risk and loss. Petitioners had not at any time during the four years paid, or offered to pay, any rental, nor had they sought an Order fixing the reasonable rental value of the property as required by Section 75(s) (2). They had therefore failed to comply with the statute in a most important particular.

The debtors had long previously filed their first Petition for Appraisal and the property had been duly and regularly appraised in May, 1935, [Tr. pp. 3-9] for $68,550.00. Petitioners have never indicated any disagreement with this appraisal, and it must therefore be concluded that they admitted this to be the fair market value of the property. However, no offer was ever made by petitioners to pay the amount of this appraisement or any other amount into Court under Section 75(s) (3).

At all times during the pendency of this proceeding, up to the date of the Order Permitting Sale (nearly five years), petitioners had the benefit of a general Stay Order restraining all proceedings against them. [Tr. pp. 10-12.] Upon the hearing of respondents' Petition to Sell in the District Court, petitioners argued that the Con-

ciliation Commissioner then had under consideration the making of a three-year statutory stay Order under Section 75(s) (2). To avoid embarrassment, under the circumstances, the District Court made an Order enjoining the Commissioner from making a three-year stay Order until the respondents' Petition had been determined. [Tr. pp. 149-150.] Nothing in the record of this case in any way indicates that the Conciliation Commissioner had decided to grant a three-year stay Order at the time the District Court made its injunctive Order of December 7, 1938.

The Specification of Errors.

Petitioners assign as error the decision of the Circuit Court of Appeals that, under Section 75 (s) of the Bankruptcy Act, as amended:

(1) the District Court may, in its discretion, grant a creditor's petition for leave to sell while the Conciliation Commissioner has under consideration the making of a three-year statutory stay order under Section 75(s) (2);

(2) the District Court is not bound to consider as binding the appraisements made in the proceeding if the debtor is unable to refinance himself within three years; and

(3) the District Court has jurisdiction to grant a creditor's petition to foreclose without the appointment of a trustee and sale of the property under control of the Court.

ARGUMENT.

Summary of Argument.

A brief outline of petitioners' argument in this case follows:

POINT I. THE DISTRICT COURT PROPERLY GRANTED THE PETITION OF THE CREDITOR FOR LEAVE TO SELL UNDER THE FACTS OF THIS CASE.

(a) Proceeding under Section 75 of the Bankruptcy Act had been pending for nearly five years during which time debtors had possession of the property without payment of rent.

(b) This case is not controlled by *John Hancock Mutual Life Insurance Company v. Bartels*, 60 S. Ct. 221, but the principles announced in *Wright v. Vinton Branch of The Mountain Trust Bank of Roanoke, Va.*, 300 U. S. 440, are applicable.

(c) The *Bartels* case is distinguishable upon the facts.

(d) There was ample evidence to support the order of the District Court granting respondent's petition to foreclose.

(1) Respondent Bank's loans had increased from $65,735.27 to $89,246.82 during pendency of the proceeding.

(2) No interest had been paid on the loans for six years.

(3) Respondent Bank had been obliged to continually make large advancements for taxes, bond payments, etc., to protect the security.

(4) Indebtedness had increased to a point where it exceeded the appraised value of the security.

(5) There was no reasonable prospect of debtors' rehabilitation.

(e) Petitioners did not comply with the statute, having failed to obtain a statutory stay order during the four years in which the proceeding had been pending.

POINT II. THE DISTRICT COURT WAS NOT BOUND BY APPRAISEMENTS MADE UNDER SECTION 75 (s) IN PASSING UPON CREDITOR'S PETITION.

(a) The Court properly granted the petition in order to save the creditor from further loss where the highest Court appraisement of the property was $87,300.00 and the debt exceeded $89,000.00.

(b) The appraisement of $87,300.00 could not be binding where such appraisement had never been approved by the Conciliation Commissioner or become final.

(c) Petitioners' attempt to overcome the effect of the Court's appraisement by filing affidavits showing the property to be of greater value, nullifies petitioners' contention that the Court appraisement was binding.

POINT III. UNDER SECTION 75 (s) THE DISTRICT COURT HAS JURISDICTION TO GRANT A CREDITOR'S PETITION FOR LEAVE TO FORECLOSE WITHOUT THE APPOINTMENT OF A COURT TRUSTEE.

(a) No objection was made by petitioners below and the point cannot be raised for the first time on appeal.

(b) The Court is given a *permissive* right to appoint a Court trustee for liquidation; it is not mandatory that the Court do so.

(c) It would have been an idle act to require the appointment of a trustee in this case.

POINT I.

Under Section 75 (s) of the Bankruptcy Act, the District Court May, in the Exercise of a Sound Discretion, Terminate the Stay and Permit Foreclosure at the Request of a Creditor if It Appears That the Debtor Has Had Ample Opportunity to Effect Rehabilitation and Has Been Unable to Do So, and That Further Delay Would Only Cause the Creditor Irreparable Loss.

Petitioners argue that a District Court must stand by while a Conciliation Commissioner makes a three-year stay order under Section 75 (s) even though the District Court itself has found on substantial evidence (1) that the debtor has already had ample opportunity to effect rehabilitation and has failed to accomplish anything in that direction; (2) that there is no equity in the debtor's property above the amount of the claims against it; and (3) that further delay will only injure irreparably the secured creditor.

The Circuit Court of Appeals in its opinion correctly disposed of this contention when it said:

> "The gist of their first assignment is that the District Court erred in permitting foreclosure of liens upon the property while the conciliation commissioner had under consideration the making of a stay order under Section 75 (s) (2). The argument seems to be that such a stay order is mandatory. To this we do not agree. It was said in Wright v. Vinton Branch of the Mountain Trust Bank of Roanoke, 300 U. S. 440, 462, wherein the Supreme Court upheld the constitutionality of Section 75 (s):
>
> "'* * * paragraph 3 also provides that "If . . . the debtor at any time . . . is unable

to refinance himself within three years," the court may close the proceedings by selling the property. **This clause must be interpreted as meaning that the court may terminate the stay if after a reasonable time it becomes evident that there is no reasonable hope that the debtor can rehabilitate himself within the three-year period.'" [Tr. p. 189.]

Petitioners seek to show that the recent decision of this Court in *John Hancock Mutual Life Insurance Company v. Bartels*, 60 S. Ct. 221, overrules *Wright v. Vinton Branch of The Mountain Trust Bank of Roanoke, Va.*, 300 U. S. 440. We respectfully submit that this is not so and that the decision of the Circuit Court of Appeals on rehearing in the case at bar correctly interpreted the decision in the *Bartels* case when it stated:

> "Appellants have filed a petition for rehearing, contending that the case of John Hancock Mutual Life Ins. Co. v. Bartels, ... U. S. ....., 60 S. Ct. 221 (December 4, 1939), decided by the United States Supreme Court a few days subsequent to our decision in the instant case, holds contrary to our decision.
>
> "We have examined the Hancock case, *supra*, and do not agree with appellants' interpretation of the case.
>
> * * * * * * * *
>
> "In our decision we relied on the case of Wright v. Vinton Branch, *supra*, which held that the Act 'must be interpreted as meaning that the court may terminate the stay if after a reasonable time it becomes evident that there is no reasonable hope that

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*All emphasis ours unless otherwise indicated.

the debtor can rehabilitate himself within the three-year period.' This construction was given the statute in order to uphold its constitutionality. The language which we relied upon in our decision is not the language of which the Supreme Court disapproved in the Hancock case, *supra*.

"Appellants argue that the Hancock case holds that it is the duty of the District Court to follow the statute, and argue therefrom that the District Court erred in permitting foreclosure of liens upon the property while the conciliation commissioner had under consideration the making of a stay order.

"We adhere to our decision that the District Court has discretion to terminate the stay if at any time it appears that rehabilitation is not reasonably probable, and that in the instant case, it does not appear that the District Court abused that discretion." [Tr. pp. 198-199.]

The facts in the *Bartels* case were entirely dissimilar to the case at bar. The following major differences may be noted:

(1) In the *Bartels* case the question was whether the District Court was correct in setting aside the adjudication under subsection (s) and dismissing the entire proceeding. In the case at bar the debtors were adjudicated under subsection (s) and no question has been raised as to the propriety of such adjudication or the proceedings predicated thereon. Neither the adjudication of the debtors under subsection (s) nor the proceeding itself was affected

by the Court's order in the instant case. Bartels on the other hand was denied the right to be adjudicated under subsection (s) and his appeal went up involving that question; the debtors in the case at bar, were adjudicated bankrupts under subsection (s) on Mar. 6, 1935, and their persons and property remained subject to that section until the Court's order on Mar. 25, 1939, permitting the appellees to foreclose their liens. In the *Borchard* case the appeal involves the order of the District Court granting the creditor's Petition for Leave to Foreclose Liens on Real Property which petition was PRESENTED TO THE COURT AFTER THE FARMER-DEBTOR HAD RECEIVED CONSIDERABLY MORE TIME FOR REHABILITATION THAN THAT CONTEMPLATED BY THE LAW IN QUESTION.

(2) In the *Bartels* case, only four months and three days had expired from the inception of the proceeding until its dismissal. Bartels had spent less than three months under subsection (s) when the District Court terminated the proceeding. In the instant case, the debtors have had the benefit of almost a five-year stay—nearly two years more than the three-year period contemplated by the Act—during all of which time they enjoyed the relief and all the benefits and advantages of, and had their property dealt with under, subsection (s), and during all of which time appellees were restrained by court order from taking any steps to foreclose their liens. The debtors herein have received everything the Supreme Court and the Circuit Court of Appeals for the Fifth Circuit held Bartels was entitled to. Bartels was denied the experience of being under subsection (s), whereas the debtors herein would soon have had double the time allowed for rehabilitation. The Court's order which debtors herein appeal from

simply holds in substance and effect that the debtors, after obtaining all the benefits of subsection (s), can no longer hinder or delay enforcement of the creditor's liens, which liens the act in question expressly states shall be preserved.

The debtors in the case at bar received all of the benefits of Section 75 and its various subsections. They were adjudicated under (s); their property was appraised not once, but twice, the first time in May, 1935, four years prior to the filing of the last petition for appraisement; they were allowed to retain possession of all of their property under the supervision of the Court for nearly five years; they did not pay any rental whatever, at any time, notwithstanding the provisions of the applicable law; and they did not at any time tender or offer to pay the amount fixed by the appraisement for the property. They did not keep the taxes paid; on the contrary, the Bank was obliged to advance its own money to pay taxes and bonds. It cannot be refuted in this case that the debtors had not only all of the benefits of Section 75, but they were not obliged to bear the burdens imposed by the statute in the form of payments into court for the discharge of taxes, the upkeep of the property, or application upon their debts.

The gist of this Court's decision in the *Bartels* case is that where a debtor complies with Subsections (a) to (r) of Section 75, he is entitled as a matter of right to be adjudicated under Subsection (s) and to have his proceeding entertained and his property administered under that section; that adjudication under Subsection (s) cannot be denied or the proceeding dismissed because there does not then appear to be a reasonable probability of financial rehabilitation. This holding accords with the

spirit of Section 75 since the debtor is presumed to be in financial distress at the time he files under that statute and a maximum period of three years is allowed to permit the debtor to demonstrate what he can accomplish in the way of rehabilitation. To deprive him of the right to file his Petition under Subsection (s) upon the ground that he then had no reasonable prospect of rehabilitation, would be to restrict the benefits of the law to an extremely limited number or class of distressed farmers. The plain purpose of the law was to grant a moratorium during which the farmer could at his option do certain things, and as a duty was required to do certain other things. Judge Sibley, who wrote the opinion of the Circuit Court of Appeals for the Fifth Circuit which was affirmed by this Court in the *Bartels* case, uses these words in outlining the use of Subsection (s):

> "Confusion has arisen, we think, touching the way in which Subsection (s) fits into the scheme of bankruptcy, as to when the stay provided therein may be denied, and how security holders are to have their rights preserved. Farmers were favored in the original Bankruptcy Act in that while they might voluntarily go into bankruptcy, they could not be forced in. This is continued in proceedings under Section 74 (1) 11 U. S. C. A. Sec. 202 (1). Section 75 deals only with farmers, and as stated at its end, Subsection (s) (6), 11 U. S. C. A., Sec. 203 (s) (6) is emergency legislation, limited originally to 5 years, and not to be applied where the Judge finds no emergency to exist locally. * * * Creditors as a rule do not wish farms, * * * Section 75 is intended to serve all these interests while seeking mainly to help distressed farmers so far as that may rightly be done, * * * The applicant under Section 75 is at first

not a bankrupt, but a debtor. The aid of the court is first extended to secure a voluntary adjustment with his creditors. * * * If this adjustment can not be accomplished, the farmer may wholly drop the matter or he may turn to Subsection (s) and 'amend his Petition * * * asking to be adjudged a bankrupt.' When so adjudged he becomes a bankrupt under the Bankruptcy Law, required to surrender his property except exemptions, and entitled to ask a discharge from his debts. But Subsection (s) introduces for a farmer who timely invokes it very important changes in the applicable bankruptcy law. Instead of immediately surrendering his property, and especially his farm and equipment, he may retain them, or so much as he requests, for three years, paying a reasonable rent for them. * * *. But secured creditors whose liens antedate the law have as to their security vested rights which must be effectuated. * * * A creditor with a mortgage on the farm may be able to force a sale which will defeat a rehabilitation of the farmer which might otherwise have been accomplished. And, although there be no secured debts, or they are not urgently pressed, rehabilitation may appear to be impracticable, or pending it the farmer may breach his obligations, and then ordinary bankruptcy procedure may be ordered to go forward as Subsection (s) (3) declares. In neither case under a proper construction of Section 75 is the entire proceeding to be dismissed. On the contrary, when the rehabilitation sought by Subsection (s) fails, the farmer is still a bankrupt, and his estate is to be administered and his debts discharged as in other cases of voluntary bankruptcy. 'In proceedings under this section [Section 75] except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers and duties of its of-

ficers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition asking to be adjudged a bankrupt was filed with the clerk. * * *' Bartels * * * rightfully asked adjudication as a bankrupt, invoking Subsection (s). *His secured creditor had the right thereafter to ask the court for a sale or other disposition of the security, if the delay and rentals fixed under Subsection (s) would impair his vested rights.* * * * The adjudication under Subsection (s) is good if the farmer never makes any application to retain possession of his property and for its appraisal and a stay of all other proceedings. The language of the statute shows that such application is optional, and the option may be lost by failure to assert it at the times the statute names. 'Such farmer may, at the same time, or at the time of the first hearing, petition the court that all of his property * * * * be appraised,' etc. If no such petition is made, or if later the benefits of possession and stay are defeated, the adjudication stands as a voluntary adjudication in bankruptcy. Appropriate proceedings ought to follow."

Reviewing the terms of the statute, this Court in the *Bartels* case concluded:

"The procedure under Subsection (s) is intended to protect all interests. * * * if there has been compliance with the statutory conditions, the court is directed *to stay all proceedings against the debtor or his property for a period of three years* and *during that time* the debtor may retain possession of all or

part of his property subject to the court's control, provided he pays a reasonable rental semi-annually. That rental is to be paid into court and is to be used, first for the payment of taxes and upkeep of the property and the remainder is to be distributed among the creditors as their interests may appear. If the court finds it necessary to protect the creditors 'from loss by the estate' or 'to conserve the security,' the court * * * in addition to the prescribed rental may require payments to be made by the debtor on the principal of his debts in the manner set forth. * * * There is the further proviso, for the protection of secured creditors, that upon request in writing by any secured creditor the court shall order the property upon which the secured creditor has a lien to be sold at public auction. See *Wright v Vinton Mountain Trust Bank, supra* (300 U. S. pp. 458-461, 81 L. ed. 741, 742, 57 S. Ct. 556, 112 A. L. R. 1455, 33 Am. Bankr. Rep. (N. S.) 353) * * *

"If, however, the debtor at any time fails to comply with the provisions of the section or with any orders of the court made thereunder or is unable to refinance himself within three years, the court may order the appointment of a trustee and direct the property to be sold or otherwise disposed of as provided in the Act.

"The scheme of the statute is designed to provide an orderly procedure so as to give whatever relief may properly be afforded to the distressed farmer-debtor, while protecting the interests of his creditors by assuring the fair application of whatever property the debtor has to the payment of their claims, the

priorities and liens of secured creditors being preserved. See *Wright v. Vinton Mountain Trust Bank, supra; Adair v. Bank of America Nat. Trust & Sav. Asso.*, 303 U. S. 350, 354-357, 82 L. ed. 889, 892-895, 58 S. Ct. 594, 35 Am. Bankr. Rep. (N. S.) 725; *Wright v. Union Cent. L. Ins. Co.*, 304 U. S. 502, 516, 517, 82 L. ed. 1490, 1500, 1501, 58 S. Ct. 1025, 36 Am. Bankr. Rep. (N. S.) 950."

We respectfully submit that there is nothing in the *Bartels* decision which overrules the following clear and positive views expressed by this Court in *Wright v. Vinton Branch of The Mountain Trust Bank of Roanoke, Va., supra:*

"Whether, in view of the emergency, an absolute stay of three years would have been justified under the bankruptcy power, we have no occasion to decide. There are other provisions in the statute affecting the mortgagor's right to possession. Their phraseology is lacking in clarity. BUT WE ARE OF THE OPINION THAT, WHILE THE ACT AFFORDS THE DEBTOR, ORDINARILY, A THREE-YEAR PERIOD OF REHABILITATION, THE STAY PROVIDED FOR IS NOT AN ABSOLUTE ONE: AND THAT THE COURT MAY TERMINATE THE STAY AND ORDER A SALE EARLIER."

* * * * * * * *

"PARAGRAPH 3 ALSO PROVIDES THAT 'IF . . . THE DEBTOR AT ANY TIME . . . IS UNABLE TO REFINANCE HIMSELF WITHIN THREE YEARS,' THE COURT MAY CLOSE THE PROCEEDINGS BY SELLING THE

PROPERTY. THIS CLAUSE MUST BE INTERPRETED AS MEANING THAT THE COURT MAY TERMINATE THE STAY IF AFTER A REASONABLE TIME IT BECOMES EVIDENT THAT THERE IS NO REASONABLE HOPE THAT THE DEBTOR CAN REHABILITATE HIMSELF WITHIN THE THREE-YEAR PERIOD.

"Finally, the intention of Congress to make the stay terminable by the court within the three years is shown also by Paragraph 6, which declares the Act an emergency measure, and provides that:

'if in the judgment of the court such emergency ceases to exist in its locality, then the court, in its discretion, may shorten the stay of proceedings herein provided for and proceed to liquidate the estate.'

"Since the language of the Act is not free from doubt in the particulars mentioned, we are justified in seeking enlightenment from reports of Congressional committees and explanations given on the floor of the Senate and House by those in charge of the measure. When the legislative history of the bill is thus surveyed, IT BECOMES CLEAR THAT TO CONSTRUE THE ACT OTHERWISE THAN AS GIVING THE COURTS BROAD POWER TO CURTAIL THE STAY FOR THE PROTECTION OF THE MORTGAGEE WOULD BE INCONSISTENT NOT ONLY WITH PROVISIONS OF THE ACT, BUT WITH THE COMMITTEE REPORTS AND WITH THE EXPOSITION OF THE BILL MADE IN BOTH HOUSES BY ITS AUTHORS AND THOSE IN CHARGE OF THE BILL AND ACCEPTED BY THE CONGRESS WITHOUT DISSENT. WE CONSTRUE IT AS GIVING THE COURTS SUCH POWER."

The Opinion of the Circuit Court of Appeals in the case at bar places reliance upon the above quoted language of this Court in the *Wright* case when it states:

> "It seems clear from the case of Wright v. Vinton etc., *supra*, that the granting or denial of a petition for authority to foreclose in proceedings such as we have before us is at all times a matter for the exercise of the court's discretion. It is the well settled rule that an appellate court will not review the action of a lower court as to matters within its discretion unless it appears that there has been an abuse of discretion, and we find no such abuse." [Tr. p. 190.]

In demonstrating that the District Court had carefully considered the question whether respondents' Petition for Leave to Sell should be granted, the Circuit Court of Appeals in this case quotes the Memorandum Opinion of the District Court as follows:

> "The District Court expressed its opinion by the following memorandum:
>
> "'It appears that the indebtedness of the debtors to the bank has constantly increased in amount since 1934. In October of that year the total was $65,735.27. At the time the last motion was filed the indebtedness had grown to the amount of $89,246.82. The claim of the bank is that it is threatened with loss and that the property is insufficient in value to satisfy the amount of the debt owing to it. On the other hand, the debtors claim that their property is worth approximately $90,-

000.00. They submitted several affidavits of individuals who supported their contention with regard to the value. It appears that appraisers appointed by the conciliation commissioner appraise the total value of the property at $87,300.00. In addition to this, the bank submitted affidavits of two real estate brokers who fix the value at $55,085.00 and at $68,552.00 respectively. An employee of the bank makes affidavit that the assessed value of the property for tax purposes for the fiscal year 1937-1938 is a total of $30,400.00. It is quite a common understanding that assessors appraise real property at about 50% of its actual value. The highest appraisement figure given by the real estate brokers would seem to represent approximately the correct market value." [Tr. p. 188.]

And in examining the basis of the District Court's Opinion, the Circuit Court of Appeals reviews the pleadings in the case and that Court's findings as follows:

"The allegations of the appellees' 'Petition for Leave to Sell Under Deeds of Trust' are to the effect that the total indebtedness to the petitioner at the time of filing the petition was in excess of $89,000.00; that taxes in the sum of $1,763.26 were then a lien upon the property; that for more than three years last past the total amount of indebtedness had steadily been increased until at the date of the petition the total amount of increase in said indebtedness since the inception the proceedings amounted to approximately $25,000.00; that the appellants for

more than three years last past had been and were at the time of filing the petition unable to financially rehabilitate themselves or to refinance said loans; and that they had no equity in the property. The appellants filed no answer to appellees' petition. The only document filed in opposition to the petition, other than affidavits of appraisal, was an affidavit of counsel for appellants, which affidavit was based solely upon the fact that the proceedings were at that time pending before the conciliation commissioner. Whether or not there was an issue as to the facts upon which the appellees' motion was made, and whether or not a duty rested upon the appellees to otherwise prove those facts, the court's memorandum shows that he considered all of the pertinent facts that had been presented in the proceedings before ruling on the motion.

"In addition to the above, it appears without dispute that the total indebtedness including principal, advancements and interest, excluding the foreclosure costs, etc., which are complained of, amounts to in excess of $83,000.00, and is increasing rapidly because of accruing interest and taxes. In view of the court's finding that the property was valued at only $68,552.00, there was no error in the finding that the debtors are unable to financially rehabilitate themselves. From the evidence this would follow almost to a mathematical certainty. However, we are not prepared to say that the order would not have been proper even if the full value as claimed by appellant had been found to be the true value.

"Appellants argue that it was error for the court to treat the total indebtedness and all of the security as a single unit for the purpose of determining the propriety of granting the petition for leave to sell, since there were four separate parcels of land, securing separate loans. With respect to this argument, we deem it sufficient to say that the very large load of ever increasing indebtedness as demonstrated by the undisputed evidence amply supports a finding that there was no reasonable possibility of appellants' rehabilitation. In these circumstances there was no abuse of discretion in the trial court's making one finding respecting the entire indebtedness of appellants to appellees." [Tr. pp. 192-194.]

Petitioners' complaint that the District Court failed to "follow the orderly procedure" of the statute in enjoining the Conciliation Commissioner from making a three-year stay order under Section 75 (s) until a determination of respondents' petition for leave to sell, is wholly without merit. Petitioners' own failure to comply with the statute and obtain a three-year statutory stay order at any time during the previous four years, when there was nothing to prevent the entry of such an order, renders their contention as unequitable as it is unsound. On the plainest principle of justice petitioners are precluded from taking such a position. To permit them to do so would make this case *"one where the forms of law are used to defeat that which, in equity, constitutes the right."* (*Drexel v. Berney*, 122 U. S. 241.)

POINT II.

An Appraisement Under Section 75 (s) Does Not Bind the District Court in Passing Upon a Secured Creditor's Petition for Leave to Foreclose.

Petitioners argue that the District Court was bound to consider the appraisement of June 22, 1938, fixing the value of the property at $87,300.00, as conclusive in passing upon respondents' petition for leave to foreclose; that the District Court therefore erred in finding the property to be of less value; and that the Circuit Court of Appeals erred in approving this action of the District Court.

The substance of petitioners' argument is that if the security for a debt in excess of $89,000.00 is appraised at $87,300.00, the Court may not permit a foreclosure sale of the security to save the secured creditor from further loss. We respectfully submit that this argument is without merit. If it be assumed for the purpose of such argument, that the Court was actually bound by the June 22, 1938, appraisement to find the debtors' property worth $87,300.00 there would still have been no equity in the property for the debtors, while the debt load was admittedly increasing at an ever greater rate.

It is also argued by petitioners that no objections, exceptions or appeals from the appraisal of June 21, 1938, having been taken, it became final. This, however, is clearly incorrect since no order was ever made by the referee approving the appraisal, and the time for filing objections, exceptions and taking appeals from appraisals

does not commence to run until the referee has given such approval. Section 75 (s) provides in part:

> "The appraisals shall be made in all other respects with rights of objections, exceptions, and appeals, in accordance with this Act: Provided, That in proceedings under this section, either party may file objections, exceptions, and take appeals within four months *from the date that the referee approves the appraisal.*"

Moreover, the initial appraisal in this case, filed May 1, 1935, fixed the value of the property at $68,550.00. [Tr. pp. 3-9.] This is almost precisely the same value which the District Court placed upon the property when in its Memorandum of Decision it said:

> "It appears that appraisers appointed by the conciliation commissioner appraise the total value of the property at $87,300.00. In addition to this, the bank submitted affidavits of two real estate brokers who fix the value at $55,085.00 and at $68,552.00, respectively. * * * The highest appraisement figure given by the real estate brokers would seem to represent approximately the correct market value." [Tr. p. 152.]

If petitioners' argument has any validity, they must concede that the *first* appraisal and *not the second* would be binding on the Court. This being so, the Court properly found the property to be worth the amount of the first appraisal and could not therefore have been in error.

But the best evidence that the petitioners themselves did not consider the appraisal of June 1, 1938, or any other appraisal, final or conclusive, is found in the record of this case. Upon the hearing of respondents' petition for leave to sell, petitioners did not urge the trial court to find that any appraisal was binding; they did not even raise the point, but they did attempt to convince the trial court by means of affidavits that the property was worth far more than the amount fixed by the Conciliation Commissioner's appraisers. These affidavits were received by the court in evidence and form a part of the record. [Tr. pp. 143-149.] Petitioners have therefore shown by their own conduct that they did not believe any appraisement made in this proceeding was binding upon the District Court and they should therefore be foreclosed from raising the issue here.

Finally, respondent respectfully submits that the conclusion reached in this case by the Circuit Court of Appeals, that the provisions for appraisement under Section 75 (s) had no bearing upon the right of the court to authorize foreclosure, is correct and in accordance with the law.

POINT III.

In a Proceeding Under Section 75 (s) of the Bankruptcy Act, the District Court Has Jurisdiction to Grant a Creditor's Petition to Foreclose Without the Appointment of a Trustee or a Sale of the Property Under the Control of the Court.

Petitioners argue that the District Court had no jurisdiction to permit a foreclosure in this case without the appointment of a court trustee or a sale of the property under the control of the court. This contention is fully answered by the Circuit Court of Appeals in its opinion, as follows:

> "Appellants' final argument is to the effect that the trial court could not lawfully authorize a sale under the trust deeds before a trustee in bankruptcy was elected. This objection was not made in the court below, and cannot be considered for the first time on appeal. We do not consider it a question going to the jurisdiction of the court. In this connection we approve the language of the court in In re Ostlind Mfg. Co., 19 Fed. Supp. 836, 838-9. (D. C. D. Ore. 1937) as follows:
>
> "'The fundamental purpose of the acts relating to bankruptcies is to conserve the properties for the benefit of the debtor and creditors alike or to reduce the assets to cash for distribution among the creditors. All the specific directions of these laws, although mandatory in form, are subservient to these major purposes. The courts have authority to deal comprehensively with the real and personal property of the bankrupt so long as such purposes are carried out. * * *
>
> "'But it may be objected that since the provisions of the statute are mandatory, violation thereof re-

moves the foundation for the orders. But jurisdiction once established is not so avoided. * * *

"'But where a court has jurisdiction, it is not obliged to render correct decisions. It has the authority to hear and determine. If within the scope of power and founded in jurisdiction, the decision, whether right or wrong, is a judicial act and a finality.'" [Tr. pp. 194-195.]

The particular language of the statute which gives rise o petitioners' contention is the following:

"Section 75 (s) (3) . . . If, however, the debtor at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this action, or is unable to refinance himself within three years; *the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided in this Act.*"

The above language merely gives the court a permissive right to order the appointment of a trustee and cannot be considered to impose any duty upon the court o do so.

Petitioners seek to invoke a rule said to be applicable o ordinary bankruptcies under the general bankruptcy aw that a trustee must be appointed before a referee nay permit a foreclosure sale outside the court. But the eason for such rule does not exist in proceedings under ection 75 (s) where the debtor is actively safeguarding he interests of his estate and challenging the right of the ienor to foreclose at every step.

In *Comer v. John Hancock Mut. L. Ins. Co.* (C. C. A. 8), 80 Fed. (2d) 417, the court refers to the reason for such a rule in ordinary bankruptcies, as follows:

> "It is well settled, if not fundamental, that a trustee in bankruptcy takes title to the real estate of a bankrupt, and that such title relates back to the date of filing the petition. Till the trustee is elected, there is not in existence any one to represent the estate, against attacks made on the trustee's title to real estate, or to represent the estate when an order of sale is sought by lienors."

It would have been an idle and useless act to require the appointment of a trustee in this case as a condition precedent to an order allowing an outside sale of the encumbered property when the proceeding had been pending for over four years; no unsecured creditors were complaining of the order; and the court itself had fully examined into the question of the value of the property and the prospects of rehabilitation. The words of the court in *Comer v. John Hancock Mut. L. Ins. Co., supra*, are applicable to petitioners' contention on this phase of the case:

> "This reference was to the fact that the subject of bankruptcy . . . . is allocated to the category of equity (Local Loan Co. v. Hunt, 292 U. S. 234, 240, 54 S. Ct. 695, 78 L. Ed. 1230, 93 A. L. R. 195), and that an equity court ought not to countenance such injustice as would flow from the approval of appellants' contention. In other and vernacular words, no court of equity should allow one person to be robbed albeit under the empty shell and form of law, so that another shall be unjustly enriched; and this is so even though equity will follow the law, unless the law works inequity."

Conclusion.

We respectfully submit that the decision of the Circuit Court of Appeals in this case is correct and in accordance with the law and the facts, it having been conclusively shown: (1) that the within proceeding had been pending nearly five years at the time respondents' petition for leave to foreclose was filed; (2) that during all of said period petitioners had occupied the property and enjoyed all of the benefits of subsection (s) of Section 75 without the necessity of paying any rental as required by said subsection; (3) that petitioners failed to comply with the requirements of the statute in that they did not seek to obtain a statutory stay and rental order for more than four years after the inception of the proceeding; (4) that although more than four years elapsed following the May, 1935, appraisement, petitioners never offered to pay the amount of said appraisement, or any other sum, for the property; (5) that during all of said period the indebtedness of petitioners to respondents had been constantly increasing; (6) that during said period petitioners had failed to keep the taxes, bond installments and insurance paid up and respondent Bank had consequently been compelled to advance large sums for this purpose (approximately $5,278.59 being owing on this account); (7) that the indebtedness had increased to the point where it far exceeded the value of the security; (8) that no reasonable hope existed for rehabilitation of the debtors because, in addition to the circumstances shown, the debtors had been unable to make any move whatever to-

wards their financial rehabilitation during the years they had enjoyed the benefits of the statute; and (9) that upon every just view of the case it was fair and equitable to allow the Bank to take proceedings which would save it from further loss.

For the reasons stated, we respectfully submit that the decision of the Circuit Court of Appeals in this case is not in any way at variance with the decision of this Court in *John Hancock Mutual Life Insurance Company v. Bartels*, 60 S. Ct. 221; that no important question of either bankruptcy or general law is involved, and that there is no basis for the issuance of a Writ of Certiorari in the within cause.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 752.—October Term, 1939.

Franz J. Borchard and Frieda W. Borchard, Petitioners,
vs.
California Bank and California Trust Company.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[May 20, 1940.]

Mr. Justice Roberts delivered the opinion of the Court.

We granted certiorari in this case for the reason that it presents important questions with respect to the procedure required by § 75(s) of the Bankruptcy Act, as amended.[1]

The precise matter in controversy is whether the bankruptcy court may permit foreclosure of mortgage liens where the procedure prescribed by § 75(s) has not been followed.

The petitioners, husband and wife, are farmers. Over the period January 24, 1927 to June 19, 1933, they borrowed from the respondent, the California Bank, a total of $87,566.93, in varying amounts, executing to the bank their promissory notes for the respective loans together with deeds of trust[2] on their farm real estate as security. From time to time they made payments which reduced the principal of the indebtedness to $53,919.20. The lender, in the meantime, had made some advances towards the payment of taxes on the property. Further to secure their indebtedness they executed, on January 30, 1934, a mortgage on all the crops standing or growing, or which should thereafter be planted, grown, cultivated, cut, gathered, packed, or harvested, during the life of the mortgage on certain of their farm real estate.

November 17, 1934, they filed their petition under § 75 of the Bankruptcy Act, which was approved and referred to a Conciliation Commissioner. In January 1935 the respondent bank declared de-

[1] Act of March 3, 1933, c. 204, 47 Stat. 1467; Act of June 28, 1934, c. 869, 48 Stat. 1289; Act of August 28, 1935, c. 792, 49 Stat. 942. The Act has been further amended in particulars not here important by the Act of June 22, 1938, 52 Stat. 840, 939. Section 75, as it now stands, is Tit. 11, U. S. C. § 203.

[2] The deeds of trust ran to the respondent Trust Company as trustee.

faults, and recorded notices thereof and of its election to cause the property to be sold pursuant to the deeds of trust, and the law of California.

March 25, 1935, the Conciliation Commissioner appointed appraisers who filed an appraisal on May 1 valuing the debtors' real estate at $68,550. It is to be noted that § 75 contains no provision for appraisal during the course of the conciliation proceedings covered by sub-sections (a) to (r); nor do we find any rule of the District Court providing for appraisal at this stage of the cause. The transcript of record does not disclose whether this appraisal was asked by any creditor or by the debtors. So far as appears, the order for the appointment of appraisers was made by the Conciliation Commissioner of his own motion.

The debtors were unable to obtain the requisite acceptance of creditors to the composition and extension proposal they submitted. As a consequence, they amended their petitions and prayed to be adjudicated bankrupts in accordance with the provisions of § 75(s). The petition was granted and an adjudication entered May 6, 1935. Apparently no further proceedings were taken until June 26, 1935, when the bankruptcy cause was dismissed on the ground that this court had held § 75(s) unconstitutional.[3] On the same day the debtors petitioned a local court for relief under a State moratorium act and obtained an order granting a moratorium, which remained in effect until September 20, 1935, when the debtors filed a petition for reinstatement of the bankruptcy cause in accordance with the amendment of § 75(s) adopted to meet the decision in the *Radford* case.[4] On the same date the District Court approved the petition, ordered the proceedings reinstated, and referred the case to a Conciliation Commissioner in accordance with the provisions of § 75(s). The court restrained the respondents from selling, or proceeding with a sale of, the real estate covered by the deeds of trust and also enjoined them from collecting from packers or processors the proceeds of crops covered by mortgage, until the further order of the court.

October 18, 1935, the petitioner Franz J. Borchard presented his petition to the Conciliation Commissioner praying that appraisers be appointed; that his exempt property be set aside to him, and that

[3] Louisville Joint Stock Land Bank v. Radford, 295 U. S. 555.

[4] Act of August 28, 1935, c. 792, 49 Stat. 942.

he be allowed to retain prossession, under the supervision and control of the court, of all of the remainder of his property, and for such further order as might be just and proper in the premises, as authorized by § 75(s). Shortly thereafter the debtors filed a petition for an order on the bank to compel it to release its asserted claim to the crop of oranges grown on their property in 1935. In opposition the bank not only asserted the validity of its lien, but urged that the proceedings be dismissed because § 75(s), as amended, was unconstitutional. The District Judge held that the bank had a lien on the 1935 orange crop but refrained from passing upon the validity of § 75(s), stating that he would decide that question at a later date if the parties so desired. Apparently the parties requested a ruling, and, on May 15, 1936, the Judge overruled the contention of the bank and refused to dismiss the proceedings.

Nothing having been done pursuant to the petition for appraisal and award of possession to Franz J. Borchard, the petitioners and respondents, on May 27, 1936, filed in the District Court a stipulation by the terms of which $3,900, held by third parties, being the proceeds of 1935 crops harvested from the premises, was to be paid to the bank and by it expended for the cultivation and improvement of the land. The District Court accordingly ordered the sum paid to the bank. June 10, 1937, the parties stipulated that $2,494, like proceeds of crops harvested, be paid to the bank, to be expended for the cultivation of the farm. The court so ordered. December 20, 1937, a stipulation was filed and an order made that $2,000 be paid to the bank, $1,500 to the debtors, and $946 applied to taxes. Finally, on March 7, 1938, pursuant to stipulation, $1,763 was released from the hands of third parties to be expended for the cultivation and preservation of the mortgaged real estate. The stipulation further provided that the bank should receive the monies realized from the sale of then growing crops and should apply them, so far as necessary, to maintain and protect the orange grove on the property.

All of the stipulations reserved the rights of the parties and were to be without prejudice to such rights.

May 24, 1938, the debtors petitioned the Conciliation Commissioner for an appraisal and the setting aside of the property to them. June 22, 1938, appraisers were appointed and they reported the

value of the real estate as $87,300. It does not appear what, if any, proceedings were had before the Conciliation Commissioner upon the coming in of the appraisers' report. The petitioners assert that the Commissioner was considering the terms of an order for a stay and the conditions to be inserted in that order. On November 10, 1938, however, the bank filed its petition in the District Court for leave to sell under its trust deeds. The petition recited the facts as above outlined, stated the principal and interest due under the various notes; set forth the amount of the advances the bank had made for taxes and other accounts, and showed an existing indebtedness, secured by deeds of trust and mortgage, totaling $89,246.82. It alleged that the mortgaged premises would not bring more than $65,000; that the bank had already suffered a serious loss; and that further delay in the sale of the property would entail a greater one. The court took testimony as to value and concluded that the real estate was not worth more than $65,000. It found that, as the debtors had had several years within which to arrange an adjustment of their obligations and had been unable so to do, it was fair and equitable that the bank be allowed to proceed so as to save itself further loss. The petition was granted and the outstanding restraining order was dissolved.

On appeal by the debtors the Circuit Court of Appeals affirmed the decree,[5] holding that the District Court's action was justified by our decision in *Wright* v. *Vinton Branch of Mountain Trust Bank*, 300 U. S. 440.

We are of opinion that the action of the District Court in permitting the creditor to proceed to a sale for the enforcement of its liens at this stage of the proceeding was contrary to the provisions of § 75(s). That this is so is made plain by our decisions in *Wright* v. *Vinton Branch of Mountain Trust Bank*, *supra*, and *John Hancock Ins. Co.* v. *Bartels*, 308 U. S. 180. As was said in the latter case (p. 187):

"The scheme of the statute is designed to provide an orderly procedure so as to give whatever relief may properly be afforded to the distressed farmer-debtor, while protecting the interests of his creditors by assuring the fair application of whatever property the debtor has to the payment of their claims, the priorities and liens of secured creditors being preserved."

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[5] Borchard v. California Bank, — F. (2d) —.

That orderly procedure includes an application by the debtor, such as was made in the present case, for an appraisal of the property, an order that the debtor remain in possession upon terms fair and equitable to him and to secured creditors, and the entry of a stay which will assure him of his possession for three years from the date of the order, upon the conditions mentioned in the Act. As a prerequisite to an intelligent determination of the terms under which the debtor is to remain in possession, the statute requires that the court and the parties shall be informed of the fair value of the property. As pointed out in the *Wright* case, *supra*, the secured creditors' rights are protected to the extent of the value of the property. The court may order rent to be paid by the debtor, may order him to make payments on account of principal, and, in its continuing control over the property, may enter any other orders for the protection of the debtor and secured creditors which the situation requires. Failure of the debtor to comply with any such orders may eventuate in a sale.

Instead of prosecuting the cause before the Conciliation Commissioner pursuant to the debtors' petition, the bank resorted to a procedure not contemplated by the statute, evidently on the theory that it could obtain some advantage by that course. By written stipulations the bank consented to the retention of possession by the debtors and arranged that they should cooperate in the cultivation of the farm, proceeds of the crops being used for further cultivation and conservation of the real estate, for payment of taxes, and for payments to the debtors. For more than thirty-one months after the petition for appraisal was filed no action was taken. An appraisal was thereafter made. No stay order has been entered fixing terms on which the debtors are to remain in possession. The petitioners were entitled to compliance with the procedure required by the statute. The bank, at any time, could have obtained action by the Conciliation Commissioner and the court, in accordance with the statute. It cannot now maintain that the disorderly and unauthorized procedure followed by the parties is the equivalent of that prescribed by the statute and that, as the petitioners have not been able to rehabilitate themselves, it is entitled to enforce its liens.

The judgment is reversed and the cause is remanded for further proceedings in conformity with this opinion.

So ordered.

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